

Subdivision of Land and Site Plan Review

36-1 TITLE AND PURPOSE.

36-1.1 Long Title.

The long title of this chapter shall be "An Ordinance Establishing Rules, Regulations and Standards Governing the Subdivision of Land and Site Plan Review Within the Town of Kearny Pursuant to the Authority Set Forth in Chapter 291 of the Laws of 1975, and Amendments and Supplements Thereto, Setting Forth the Procedure To Be Followed by the Approving Authority in Applying and Administering These Rules, Regulations and Standards and Providing Penalties for the Violations Thereof." (Ord. No. 2-9-77 § 127-1)

36-1.2 Short Title.

This chapter shall be known as the "Land Subdivision and Site Plan Review Ordinance of the Town of Kearny." (Ord. No. 2-9-77 § 127-2)

36-1.3 Purpose.

Such regulations are deemed necessary to protect the character, stability and orderly development of all areas of the community; to secure safety from fire, flood, panic and other natural and manmade disasters and hazards; to encourage the proper location and design of streets; to promote a desirable visual and aesthetic environment through creative development techniques and good civic design and arrangements; to promote the conservation of open space and valuable resources; to prevent the degradation of the environment through improper land use; to provide adequate light, air and open space; and to provide rules, regulations and procedures which will guide the appropriate development of lands within the community in order to promote the public health, safety, morals and general welfare. (Ord. No. 2-9-77 § 127-3)

36-2 DEFINITIONS AND WORD USAGE.

36-2.1 Word Usage.

Words used in the present tense include the future; the singular number shall include the plural, and the plural the singular; the word "structure" shall include the word "building"; the word "person" includes a corporation as well as an individual; the word "lot" includes the word "plot"; the word "occupied" includes the words "designed, constructed, altered, converted, rented, leased or intended to be used"; the word "shall" is mandatory and not optional, and the word "may" is permissive. (Ord. No. 2-9-77 § 127-4)

36-2.2 Definitions.

As used in this chapter:

Administrative officer shall mean the respective secretaries for any application before the Planning Board or the Board of Adjustment.

Applicant or developer shall mean:

- a. A developer submitting an application for development.
- b. The legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract for purchase or other persons having an enforceable proprietary interest in such land.

Application for development shall mean the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, conditional use, zoning variance or direction of the issuance of a permit pursuant to law.

Approving authority shall mean the Planning Board of Kearny or the Kearny Board of Adjustment, as the case may be, as provided in Section 36-3.

Building shall mean a combination of materials to form a construction adapted to a permanent, temporary or continuous occupancy and having a roof.

Common open space shall mean an open space area within or related to a site designated as a development, and designed and intended for the use or enjoyment of residents and owners of the development. "Common open space" may contain such complementary structures and improvements as are necessary and appropriate for the use or enjoyment of residents and owners of the development.

Conditional use shall mean a use permitted in a particular zoning district only upon showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the Zoning Ordinance and upon the issuance of an authorization therefor by the Planning Board.

Conventional development shall mean development other than planned development.

Days shall mean the number of calendar days, for the purpose of this chapter.

Development shall mean the division of a parcel of land into two (2) or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure or of any mining, excavation or landfill; and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required.

Drainage shall mean the removal of surface water or groundwater from land by drains, grading or other means, including the control of runoff to minimize erosion and sedimentation during and after construction or development, and the means necessary for water supply preservation or preservation or alleviation of flooding.

Drainage right-of-way shall mean the lands required for the installation of stormwater sewers or drainage ditches or required along natural streams or watercourses for preserving the channel and providing for the flow of water therein, to safeguard the public against flood.

Erosion shall mean the detachment and movement of soil or rock fragments by water, wind, ice and gravity.

Final approval shall mean the official action of the approving authority taken on a preliminary-approved major subdivision or site plan after all conditions, engineering plans and other requirements have been completed or fulfilled and the required improvements have been installed or guaranties properly posted for their completion, or approval conditioned upon the posting of such guaranties, which, in the case of subdivision, shall be filed with the proper County recording officer.

Floor area shall mean the sum of the gross horizontal areas of the several floors of a building measured from the exterior walls in a building. "Floor area" shall not include areas devoted to mechanical equipment serving the building, stairways and elevators, areas used exclusively for off-street parking and loading for motor vehicles, or to any space where the floor-to-ceiling height is less than seven (7) feet.

Governing Body shall mean the Mayor and Town Council of the Town of Kearny.

Historic site shall mean any building, structure, area of property that is significant in the history, architecture, archeology or culture of this State, its communities or the nation and has been so designated.

Interested party shall mean any person, whether residing within or without the Town of Kearny, whose right to use, acquire or enjoy property is or may be affected by any action taken under this chapter, or whose right to use, acquire or enjoy property under this chapter or under any other law of this State or the United

States has been denied, violated or infringed upon by any action or a failure to act under this chapter.

Lot shall mean a designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit.

Maintenance guaranty shall mean security, other than cash, which may be accepted by Kearny for the maintenance of any improvements required by this chapter.

Major subdivision shall mean any subdivision not classified as a minor subdivision.

Master Plan shall mean a composite of one (1) or more written or graphic proposals for the development of Kearny which shall have been duly adopted by the Kearny Planning Board.

Minor subdivision shall mean any subdivision containing not more than three (3) lots fronting on an existing street, not involving any new street or road or the extension of municipal facilities and not adversely affecting the development of the remainder of the parcel or adjoining property, which is not adjoined by other unplatted land in the same ownership and is not in conflict with any provisions or portions of the Master Plan, Official Map, Zoning Ordinance, Health Code or this chapter.

Office building shall mean, under the provisions of Chapter 220 of the Laws of 1975 pertaining to physically handicapped persons, a building or structure of more than ten thousand (10,000) square feet of gross floor area wherein commercial or business activity or service is performed or a profession is practiced or wherein any combination thereof is performed or practiced in all or the majority of such building or structure.

Official Map shall mean a map and accompanying ordinance adopted by the Governing Body of Kearny pursuant to law. Such map shall be deemed to be conclusive with respect to the location and width of streets and public drainageways and the location and extent of flood control basins and public areas, whether or not such streets, ways, basins or areas are improved or unimproved or are in actual physical existence.

Off-site shall mean located outside the lot lines of the lot in question but within the property (of which the lot is part) which is the subject of a development application or contiguous portion of a street or right-of-way.

Off-tract shall mean not located on the property which is the subject of a development application nor on a contiguous portion of a street or right-of-way.

On-site shall mean located on the lot in question.

On-tract shall mean located on the property which is the subject of a development application or on a contiguous portion of a street or right-of-way.

Open space shall mean any parcel or area of land or water essentially unimproved and set aside, dedicated, designed or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of lands adjoining or neighboring such open space, provided that such areas may be improved with only those buildings, structures, streets and off-street parking and other improvements that are designed to be incidental to the natural openness of the land.

Party immediately concerned shall mean any applicant for development, the owners of the subject property and all owners of property and government agencies entitled to notice.

Perfected application shall mean one that is submitted in a proper and complete form, including all required application forms, maps and reviews, prior to the scheduling of a public hearing, where required, or formal action being taken by the approving authority; all required fees are submitted and filed within the appropriate time schedules; proof that no taxes or assessments for local improvements are due or delinquent on the property for which approval is sought; and all other governmental approvals are received by the approving authority or can be so conditioned by the approving authority.

Performance guaranty shall mean any security which may be accepted by the Town of Kearny, including cash, provided that the Town shall not require more than ten (10%) percent of the total performance guaranty in cash.

Physical handicap shall mean a physical impairment which confines a person to a wheelchair; causes a person to walk with difficulty or insecurity; affects the sight or hearing to the extent that a person functioning in public areas is insecure or exposed to danger; causes faulty coordination; or reduces mobility, flexibility, coordination and perceptiveness to the extent that facilities are needed for the safety of that person.

Plat shall mean a map or maps of a subdivision or site plan pursuant to the provisions of this chapter.

Preliminary approval shall mean the conferral of certain rights pursuant to this chapter, prior to final approval, after specific elements of a development plan have been agreed upon by the approving authority and the applicant.

Preliminary floor plans and elevations shall mean architectural drawings prepared during early and introductory stages of the design of a project, illustrating in a schematic form its scope, scale and relationship to its site and immediate environs.

Public areas shall mean public parks, playgrounds, trails, paths and other recreational areas; other public open spaces; scenic and historic sites; and sites for schools and other public buildings and structures.

Public building shall mean, under the provisions of Chapter 220 of the Laws of 1975 pertaining to physically handicapped persons, any building, structure, facility or complex used by the general public, including but not limited to theaters, concert halls, auditoriums, museums, schools, libraries, recreation facilities, public transportation terminals and stations, factories, office buildings, business establishments, passenger vehicle service stations, shopping centers, hotels or motels and public eating places, constructed by any State, County or municipal government agency or instrumentality or any private individual, partnership, association or corporation, with the following exceptions: one (1) to four (4) family private residences, warehouse storage areas and all buildings classified as hazardous occupancies. As used herein, "hazardous occupancy" means the occupancy or use of a building or structure or any portion thereof that involves highly combustible, highly flammable or explosive material or which has inherent characteristics that constitute a special fire hazard.

Public drainageway shall mean the land reserved or dedicated for the installation of stormwater sewers or drainage ditches or required along a natural stream or watercourse for preserving the channel and providing for the flow of water to safeguard the public against flood damage, sedimentation and erosion.

Public open space shall mean an open space area conveyed or otherwise dedicated to a municipality, municipal agency, board of education, State or County agency or other public body for recreational or conservational uses.

Resubdivision shall mean the further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law or the alteration of any streets within any subdivision previously made and approved or recorded according to law, but does not include conveyances so as to combine existing lots by deed or other instrument.

Sedimentation shall mean the deposition of soil that has been transported from its site of origin by water, ice, wind, gravity or other natural means as a product of erosion.

Sight triangle shall mean a triangle-shaped easement established at the intersection of two (2) streets or a driveway and a street in which nothing shall be erected, placed, planted or allowed to grow in such a manner as to obstruct vision between a height of two (2) feet and six (6) inches above the center-line grade of the street or driveway. The triangle shall be determined along such street lot lines or edge of driveway twenty-five (25) feet distant from their joint intersection.

Site plan shall mean a development plan of one (1) or more lots on which is shown the existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, floodplains, marshes and waterways; the location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, screening devices and lighting; and any other information that may be reasonably required in order to make an informed determination pursuant to this chapter.

Sketch plat shall mean the sketch map of a subdivision to be used for the purpose of discussion and classification and meeting the requirements of subsection 36-4.1.

Street shall mean any street, avenue, boulevard, road, parkway, viaduct, drive or other way which is an existing State, County or municipal roadway or which is shown upon a plat heretofore approved pursuant to law or which is shown on a plat duly filed and recorded in the office of the County Recording Officer prior to the appointment of a Planning Board and the grant to such Board of the power to review plats, and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas within the street.

Structure shall mean a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above or below the surface of a parcel of land.

Subdivision shall mean the division of a lot, tract or parcel of land into two (2) or more lots, tracts, parcels or other division of land, whether immediate or future, for sale or development. The following shall not be considered subdivisions within the meaning of this chapter, if no new streets are created or extension of utilities are required: division of land found by the approving authority to be for agricultural purposes where all resulting parcels are five (5) acres or larger in size, divisions of property by testamentary or intestate provisions, divisions of property upon court order and conveyances so as to combine existing lots by deed or other instrument. The term "subdivision" shall also include the term "resubdivision."

Subdivision Committee shall mean a committee of at least three (3) Planning Board members, appointed by the Chairman of the Board, for the purpose of classifying subdivisions in accordance with the provisions of this chapter and performing such other duties relating to land subdivision as may be conferred on the committee by the Board.

(Ord. No. 2-9-77 § 127-4)

36-3 ADMINISTRATION; ENFORCEMENT AND FEES.

36-3.1 Administration; Approving Authorities.

a. *Planning Board as Approving Authority.* In accordance with Chapter 291 of the Laws of 1975, the Planning Board shall act as approving authority for subdivision plats as a condition for filing such plats with the County Recording Officer, either individually or as a part of a simultaneous application, and for site plan approval as follows:

1. For minor subdivisions.
2. For preliminary and final major subdivisions and site plans.
3. For subdivisions and site plans which also require conditional use approval.
4. For minor and major subdivisions which require site plan approval.
5. For subdivisions and site plans in which a variance is requested in accordance with N.J.S.A. 40:55D-60 from lot area, lot dimension, setback and yard requirements, provided that relief from lot area requirements shall not be granted for more than one (1) lot.

b. *Board of Adjustment as Approving Authority.* In accordance with Chapter 291 of the Laws of 1975, the Board of Adjustment shall act as approving authority for subdivision plats as a condition for filing such plats with the County Recording Officer, and for site plan approval as follows:

1. Where a use variance pursuant to N.J.S.A. 40:55D-70d is requested in which a subdivision and/or a site plan is part of the application.

c. *Planning Board and Board of Adjustment Acting as Approving Authority.* In the case of a variance request pursuant to N.J.S.A. 40:55D-60 from lot area, lot dimension, setback and yard requirements where the relief sought from lot area requirements exceeds one (1) lot, an application for subdivision or site plan approval shall proceed initially with the Planning Board and, if approved by the Planning Board, the applicant shall then proceed to the Board of Adjustment as to the lot area variances only.

d. *Exception in Application of Regulation.* Except for public hearings, the approving authority, when acting upon applications for minor preliminary and final subdivision approval, shall have the power to grant such exceptions from the requirements of this chapter as may be reasonable and within the general purpose and intent of the provisions of this chapter, if the literal enforcement of one (1) or more provisions of this chapter is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

e. *Simultaneous Review and Approval.* Except as provided in paragraph c, the approving authority shall have the power to review and approve one (1) or more land use regulations simultaneously with review for subdivision and site plan approval without the applicant being required to make further application to the approving authority or the authority being required to hold further hearings. The longest time period for action by the approving authority, whether it is for subdivision, conditional use, site plan approval or variance, shall apply. Whenever approval of a conditional use or a use variance is requested by the applicant, notice of the hearing on the plat shall include references to the request for such conditional use or use variance.

(Ord. No. 2-9-77 § 127-5)

36-3.2 Fees.

The following fees shall accompany the appropriate application. The fees shall be paid in cash, certified or bank check, payable to the Town of Kearny, as follows:

- a. *Filing Fees.*
 1. Filing fee for preliminary minor subdivision: one thousand (\$1,000.00) dollars.

2. Filing fee for preliminary major subdivision: one thousand five hundred (\$1,500.00) dollars.

3. Filing fee for final subdivision: five hundred (\$500.00) dollars.

4. Filing fee for preliminary site plan: one thousand five hundred (\$1,500.00) dollars.

5. Filing fee for final site plan: five hundred (\$500.00) dollars.

6. Filing fee for simultaneous filing of preliminary and final site plan review: two thousand (\$2,000.00) dollars.

7. Filing fee for nonconforming use/structure application: one hundred (\$100.00) dollars.

8. Filing fee for variances: (a) Bulk variance: one hundred (\$100.00) dollars single-family, one hundred fifty (\$150.00) dollars for two-family, all other uses two hundred (\$200.00) dollars. (b) Use variance: two hundred (\$200.00) dollars for a one-, two-family and three-through-five-family; all other uses five hundred (\$500.00) dollars.

9. Interpretation of zoning regulations or zoning map: fifty (\$50.00) dollars.

10. Fees for design waivers: two hundred fifty (\$250.00) dollars if a design waiver(s) is requested.

11. Fees for extensions of time or reapproval: two hundred (\$200.00) dollars.

12. Fees for a special meeting: one thousand (\$1,000.00) dollars for meeting and one thousand (\$1,000.00) dollars for additional escrow.

13. Any and all applications dealing with subdivisions (major or minor) shall include an additional fee for CADD formatting of Georeferenced Tax Mapping. Fee to be six hundred fifty (\$650.00) dollars for a subdivision of less than three (3) lots, and one thousand (\$1,000.00) dollars for three (3) or greater lots.

b. *Fees for Specific Services.* The following fees shall be applicable for the services described herein:

1. Reproduction of minutes of meetings or other reproduction costs: according to State statute.

2. Cost of transcripts to interested parties: at cost to the applicant.

3. Copy of decision: according to State statute.

4. Certified list of persons requiring notice: \$.25 per lot or ten (\$10.00) dollars, whichever is greater. Fifty (\$50.00) dollars for composing and supplying 200 foot radius map using GIS mapping system. Mailing labels (two sets) provided upon request at an additional cost of twenty-five (\$25.00) dollars.

5. Publication notice: at cost to municipality.

c. *Escrow Fees.* In addition to the required application fees established herein, the applicant may be required to establish one (1) or more escrow accounts with the Town of Kearny to cover the reasonable costs of professional review, consultation and site inspection fees. The escrow fees may be required for minor/major subdivisions, subdivision review, site plan approval, conditional use approval or any variance request before the approving authority.

1. Upon receipt of a development application, the approving authority shall determine if review by technical experts and counsel is required. If review is required, the administrative officer shall send a copy of the application and one (1) set of all maps and supportive data to the Town Engineer, the planning consultant and the approving authority attorney. Within seven (7) days of the receipt of same, the professionals shall submit an estimate of funds sufficient in amount to undertake technical reviews and findings of fact relative to the application at hand.

2. Upon approval of a development application the approving authority shall determine if engineering site inspections are required. If required the engineer will set forth an estimate of funds sufficient in amount to undertake engineering inspections of the project.

3. Such estimated fees shall be approved by the approving authority. The applicant shall deposit, forthwith upon demand, funds to meet such estimates, which funds shall be required to be placed in an escrow account by the Town Treasurer to be used in accordance with the applicable escrow provisions set forth below:

(a) The Engineer, planning consultant, approving authority attorney and any other professionals engaged shall submit vouchers for all necessary fees for examination and review, which shall be paid in an ordinary manner.

(b) Any of the aforesaid moneys left in the escrow account upon completion of the project or phase of the application procedure as the case may be, shall be returned to the applicant as soon as it is possible.

(c) Should additional funds be required after the original funds are exhausted, such funds as shall, in the judgment of the approving authority, be necessary, shall be paid by the applicant to the Town Treasurer and placed in the appropriate account or accounts.

(d) Upon receipt of sufficient funds for the escrow account, the administrative officer shall notify the Town Engineer, planning consultant, approving authority attorney and any other professionals engaged that all appropriate examinations and reviews shall be undertaken.

(e) The approving authority shall take no formal action unless all application fees and escrow funds have been paid to the Town Treasurer.

d. *Escrow Fees.*

1. Unless waived by the approving authority, an applicant for development shall deposit professional review fees in an escrow account with the Township of Kearny for review of an application for development and the preparation of documents related thereto. Such fees are in addition to the application filing fees in paragraph a. The initial escrow deposit shall be in accordance with the following schedule:

(a) Subdivision Applications:

<i>Number of Resultant Lots</i>	<i>Initial Escrow Deposit</i>
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0 lots to 2 lots	\$750.00
3 or more lots	\$250.00 per lot up to a maximum initial deposit of \$5,000.00

(b) Site Plan Applications. The largest amount resulting from the following calculations shall be required initial escrow deposit:

Site area in square feet x \$0.15/square foot up to a maximum of \$5,000.00.

Total gross floor area of new building addition x \$0.50/square foot up to a maximum of \$5,000.00.

Total gross floor area of new building or building addition involving a drive-through facility x \$1.00/square foot up to a maximum of \$5,000.00.

(c) If in the course of an application the approving authority determines that an escrow account or deposit contains insufficient funds to perform required application reviews, the Chief Financial Officer of the Town of Kearny shall provide the applicant with a notice of insufficient escrow or deposit balance. Upon such notice, the applicant shall within a reasonable time period post a deposit to the account in an amount to be agreed upon by the approving authority and the applicant.

2. The charging to and processing of escrow fees and any disputes related thereto shall be handled in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-53.1 and 40:55D-53.2.

e. The applicant shall be responsible for any and all escrows required of the applicant and all escrows shall be paid in full prior to the application being deemed complete. Should additional escrow funds be necessary during the pendency of an appeal to the Zoning or Planning Boards, the applicant shall be responsible for placing additional funds with the Town of Kearny prior to the matter being continued before the Board. Should additional escrow funds remain unpaid after the hearing of the application, the Chairman of the respective Board and the Board Secretary shall not sign the final resolution until such escrows are paid in full as the application shall be deemed incomplete.

(Ord. No. 2-9-77 § 127-6; Ord. No. 6-10-87; Ord. No. 8-14-91; Ord. No. 1996-30 § 1; Ord. No. 2005-(O)-42 § 7; Ord. No. 2005-(O)-42 § 1)

36-3.3 Public Hearings.

a. *When Required.* A public hearing shall be required for all applications except minor subdivision approval and final subdivision approval and final site plan review.

b. *Availability of Maps and Documents Prior to Hearing.* Any maps and documents for which approval is sought at a hearing shall be on file and available for public inspection at least ten (10) days before the date of the hearing during normal business hours in the office of the administrative officer. The applicant may produce other documents, records or testimony at the hearing to substantiate, clarify or supplement the previously filed maps and documents.

c. *Notice of Public Hearings.*

1. The applicant shall give notice of a public hearing to the owners of all real property, as shown on the current tax records, located within two hundred (200) feet in all directions of the property in question.

2. The notice shall state the date, time and place of the hearing; the nature of the matters to be considered; and identification of the property proposed for subdivision or development by street address and block and lot numbers as shown on the current tax duplicate in the Kearny Tax Assessor's office, a duplicate copy of which shall be forwarded to the administrative officer. The notice will also indicate that the maps and documents will be available at a specific time and location for public inspection pursuant to paragraph b.

3. Notice shall be given at least ten (10) days prior to the date of the public hearing.

4. Proof of service upon property owners and proof of publication in affidavit form shall be submitted to the administrative officer no less than forty-eight (48) hours prior to the commencement of the public hearing.

d. *Certification of List of Persons Entitled to Notice.* Upon the written request of an applicant, the administrative officer of the respective boards of the Town of Kearny shall, within seven (7) days, make and certify a list from the current tax duplicates of names and addresses of owners to whom the applicant is required to give notice. The applicant shall be entitled to rely upon the information contained in such list, and failure to give notice to any owner not on the list shall not invalidate any hearing or proceeding.

e. *Other Notification.* The applicant shall provide that notice for a hearing on an application for the development of property be given by personal service or certified mail to:

1. The Clerk of a municipality involving property within two hundred (200) feet of the municipality.

2. The County Planning Board where the property is adjacent to an existing County road or proposed road shown on the Official County Map or on the County Master Plan, or where the property affects a County drainage facility or adjoins other County land or is situated within two hundred (200) feet of a municipal boundary.

3. The Commissioner of Transportation where the property is adjacent to a State highway.

4. The Director of State and Regional Planning in the Department of Community Affairs for an application exceeding one hundred fifty (150) acres or five hundred (500) dwelling units. Such notice shall include a copy of any maps or documents required to be filed with the administrative officer of Kearny.

f. *Effect of Mailing Notice.* Any notice made by certified mail shall be deemed complete upon mailing.

g. *Verbatim Recording Required.* The approving authority shall provide for the verbatim recording of the proceedings by either stenographer or mechanical or electronic means for public hearings. The authority shall furnish its transcript, or duplicate recording in lieu thereof, on request to any interested party at his expense.

h. *Written Findings and Conclusions.* Each decision of the approving authority shall be in writing and shall include findings of fact and conclusions based thereon.

i. *Copies and Notification of Decision.*

1. A copy of the decision shall be mailed by the approving authority within ten (10) days of the date of decision to the applicant or, if represented, to his attorney, without separate charge, and to all who request a copy of the decision for a fee as specified herein. A copy of the decision shall also be filed by the approving authority in the office of the administrative officer. The administrative officer shall make a copy of such filed decision available to any interested party for a fee as specified herein and available for public inspection at his office during reasonable hours.

2. A brief notice shall be published in the official newspaper of the community. Such publication shall be arranged by the approving authority. The period of time in which an appeal of the decision may be made shall run from the publication of the decision.

(Ord. No. 2-9-77 § 127-7)

36-3.4 Minimum Requirements; Waiver of Provisions.

a. The rules, regulations and standards contained herein shall be considered the minimum requirements for the protection of the public health, safety and welfare of the citizens of the Town of Kearny. Any action taken under the terms of this chapter shall give primary consideration to the above-mentioned matters and to the welfare of the entire community. However, if the applicant can clearly demonstrate that, because of peculiar conditions pertaining to his land, the literal enforcement of one (1) or more of these regulations is impracticable or will exact undue hardship, the approving authority may permit such waivers as may be reasonable and within the general purpose and intent of the rules, regulations and standards established by this chapter.

b. The waiver provisions of this section shall be applicable to the entire chapter herein except where specifically prohibited by law.

(Ord. No. 2-9-77 § 127-8)

36-3.5 County Planning Board and Other Government Approvals.

Any site plan or subdivision application requiring County Planning Board or other governmental approval shall be submitted by the applicant to the Hudson County Planning Board or other governmental agency for review and approval. The approving authority shall condition any approval that it may grant upon timely receipt of a favorable report on the application by the County Planning Board or other governmental agency or the approval of the County Planning Board or other governmental agency by its failure to report therein within the required time period. (Ord. No. 2-9-77 § 127-9)

36-3.6 Corporation Representation.

Whenever a corporation is the applicant before the approving authority, the corporation must be represented by an attorney. (Ord. No. 2-9-77 § 127-10)

36-4 SUBDIVISION CLASSIFICATION; MINOR SUBDIVISIONS.

36-4.1 Classification of Subdivisions.

a. Any applicant for land subdivision shall submit ten (10) copies of a sketch plat of the proposed subdivision for the purpose of classification and preliminary discussion and ten (10) copies of the application form. The sketch plat shall be submitted to the administrative officer at least two (2) weeks prior to the regular meeting of the approving authority. If the applicant wishes to proceed as a major subdivision without applying for a sketch plat classification, he may proceed as provided in Section 36-6.

b. If the plat is classified as a major subdivision by the approving authority, a notation to that effect shall be made on the plat, which shall be returned to the applicant for compliance with the procedures in Sections 36-6 and 36-7.

c. The sketch plat shall be based on Tax Map information or other similarly accurate base, at a scale not less than two hundred (200) feet to the inch. The entire tract shall be shown on one (1) sheet. It shall show or include the following information:

1. The location of the portion of lots to be subdivided in relation to the entire tract.
2. All existing structures and wooded areas on the parcels to be subdivided and within a two hundred (200) foot radius of the extreme limits of the parcels to be subdivided.
3. A map indicating all lots, with dimensions of same, within a two hundred (200) foot radius of the extreme limits of the parcels to be subdivided.
4. The names of owners of property to be subdivided and of all adjoining properties as they appear on the most recent municipal tax records.
5. Tax Map sheet, block and lot numbers.
6. Lot dimensions and bearings of parcels to be subdivided, including areas after subdivision computed to the nearest tenth of a square foot.
7. The location of all structures on the parcels to be subdivided, including offsets to property lines.
8. All streets, roads and streams within five hundred (500) feet of the subdivision.
(Ord. No. 2-9-77 § 127-11)

36-4.2 Submission of Application for Minor Subdivision.

Ten (10) copies of an application shall be submitted to the administrative officer, in writing, on forms supplied by the approving authority. Receipt of an application for minor subdivision approval shall be filed no less than fourteen (14) days prior to the regular meeting date of the approving authority. Required fees, as provided in subsection 36-3.2, shall be submitted with the application form. (Ord. No. 2-9-77 § 127-12)

36-4.3 Minor Subdivision Requirements.

a. *Map Requirements.* The application shall be accompanied by ten (10) copies of the proposed subdivision accurately drawn to a scale of not less than one (1) inch equals fifty (50) feet, certified by a licensed land surveyor as to existing features and boundaries. The minor subdivision plat shall be in conformance with the Map Filing Act, P.L. 1960, c. 141 (N.J.S.A. 46:23-9.9 et seq.). All design features shall be prepared by a licensed professional engineer. The map shall indicate:

1. The location of the portion of lots to be subdivided in relation to the entire tract.
2. All existing structures and wooded areas on the parcels to be subdivided and within a two hundred (200) foot radius of the extreme limits of the parcels to be subdivided.
3. A map indicating all lots, with dimensions of same, within a two hundred (200) foot radius of the extreme limits of the parcels to be subdivided.
4. The names of owners of property to be subdivided and of all adjoining properties as they appear on the most recent municipal tax records.
5. Tax Map sheet, block and lot numbers.
6. Lot dimensions and bearings of parcels to be subdivided, including areas after subdivision computed to the nearest tenth of a square foot.
7. The location of all structures on the parcels to be subdivided, including offsets to property lines.
8. All streets, roads and streams within five hundred (500) feet of the subdivision.
9. Easements, streets, buildings, watercourses, railroads, bridges, culverts, drainpipes, rights-of-way, drainage easements and prior variances.
10. History of any previous action or restrictions on the property.

b. *Applicant's Responsibilities.*

1. The applicant shall be required to submit the following for the approving authority approval:
 - (a) Proof that no taxes or assessments for local improvement are due or delinquent for the property in question.
 - (b) Payment of all required fees and escrow funds as provided herein.
2. The approving authority may also require the following:
 - (a) Enter into a developer's agreement, prepared by the approving authority attorney, setting forth the obligations of all parties.
 - (b) Enter into a performance guaranty agreement, in a form satisfactory to the approving authority and Town, complying with subsections 36-13.2 and 36-14.2 where appropriate, guaranteeing performance of the developer's agreement.
 - (c) Convey any easements, rights-of-way or public lands in a form and under conditions satisfactory to the approving authority and the Town.

(d) Provide evidence that environmental elements relating to soil erosion and sedimentation, preservation of trees, protection of watercourses and water quality, noise pollution, topographic limitation areas, wetland areas and other environmental and ecological facts have been reviewed, where appropriate, so as to minimize adverse effects.

(Ord. No. 2-9-77 § 127-13; Ord. No. 2004-(O)-65)

36-4.4 Action by Approving Authority.

a. The approving authority shall grant or deny approval within forty-five (45) days of submission of a complete and perfected application or within such time as may be consented to, in writing, by the applicant.

b. Failure of the approving authority to act within the time period shall constitute minor subdivision approval. A certificate by the Town Clerk, whose signature shall be sufficient in lieu of the Chairman and Secretary of the approving authority, as to the failure of the approving authority shall be issued on request of the applicant and shall be so accepted by the County Recording Officer for the purposes of filing subdivision plats.

c. Whenever review or approval is required by the County Planning Board or a State agency, under appropriate circumstances, the approving authority shall not accept an application as perfected unless receipt of approval is received from the County or State agency. The approving authority may condition its approval upon a timely receipt of a favorable report from the County or State agency.

(Ord. 2-9-77 § 127-14)

36-4.5 Minor Subdivision Approval.

a. Minor subdivision approval shall be deemed to be final approval of the subdivision subject to subsection 36-4.6.

b. Approval of a minor subdivision shall expire one hundred ninety (190) days from the date of approval by the approving authority unless within such a period a plat in conformance with the Map Filing Act, P.L. 1960, c. 141 (N.J.S.A. 46:23-9.9 et seq.), or a deed clearly describing the approved minor subdivision is filed by the developer with the County Recording Officer, the Town Engineer and the Tax Assessor. In addition, copies shall be submitted to the Town Clerk, Construction Official, the County Board of Taxation and the approving authority Clerk.

c. Any such plat or deed accepted for such filing shall have been signed by the Chairman and Secretary of the approving authority.

(Ord. No. 2-9-77 § 127-15)

36-4.6 Effect of Minor Subdivision Approval.

a. The zoning requirements and general terms and conditions, whether conditional or otherwise, shall not be changed or abridged for a period of two (2) years after the date of minor subdivision approval, provided that the approved minor subdivision shall have been duly recorded as provided herein.

b. If a minor subdivision is granted on a particular tract of land, another minor subdivision on the same tract of land shall not be given until at least two (2) years after the first minor subdivision has been granted.

(Ord. No. 2-9-77 § 127-16)

36-4.7 Required Guaranties.

Before recording a minor subdivision plat or deed in lieu thereof, the approving authority may require the installation and maintenance of on- and off-tract improvements. The improvements may require the furnishing of performance and maintenance guaranties in accordance with subsections 36-13.3 and 36-14.3. (Ord. No. 2-9-77 § 127-17)

36-5 RESERVED.

36-6 PRELIMINARY APPROVAL OF MAJOR SUBDIVISIONS.

36-6.1 Submission of Application.

Sixteen (16) copies of an application shall be submitted to the administrative officer in writing on forms supplied by the approving authority. Receipt of an application for preliminary major subdivision approval shall be filed no less than fourteen (14) days prior to the regular meeting date of the approving authority. Required fees, as provided in subsection 36-3.2, shall be submitted with the application form. (Ord. No. 2-9-77 § 127-18)

36-6.2 Preliminary Plat Requirements.

a. The application shall be accompanied by sixteen (16) copies of the proposed subdivision accurately drawn to a scale of not less than one (1) inch equals fifty (50) feet, certified by a licensed land surveyor as to existing features and boundaries. The subdivision plat shall be in conformance with the Map Filing Act, P.L. 1960, c. 141 (N.J.S.A. 46:23-9.9 et seq.). All design features shall be prepared by a licensed professional engineer.

b. *Preliminary Plat Details.* The preliminary plat shall contain the following:

1. Date. All revisions shall be noted and dated.

2. A key map showing the location of the tract with reference to the surrounding properties, existing streets and streams within five hundred (500) feet of the subdivision.

3. Title of development; North arrow; scale; block and lot number; the name and address of the record owner; the name and address of the applicant; the name and address, license number and seal of the person preparing the subdivision. If the owner of the premises is a corporation, the name and address of the president and secretary shall be submitted on the application.

4. All distances shall be in feet and decimals of a foot and all bearings shall be given to the nearest ten (10) seconds.

5. The names, as shown on current tax records, of all owners of property within two hundred (200) feet of the subdivision, together with the block and lot numbers of the property.

6. The zoning district in which the parcel is located, together with the zone boundaries within two hundred (200) feet of the extreme limits of the property in question.

7. Survey data showing boundaries of the property, building or setback lines and lines of existing and proposed streets, lots, reservations, easements and areas dedicated to public use, including grants, restrictions and rights-of-way, to be prepared by a licensed land surveyor.

8. Reference to any existing or proposed covenants, deed restrictions, exceptions or variances covering all or any part of the parcel. A copy of such covenants, deed restrictions, exceptions or variances shall be submitted with the application.

9. The distances, measured along the right-of-way lines of existing streets abutting the property, to the nearest intersections with other public streets.

10. Location of existing buildings and all other structures, including walls, fences, culverts and bridges, with spot elevations of such buildings and structures. Structures to be removed shall be indicated by dashed lines; structures to remain shall be indicated by solid lines.

11. Location of all existing and proposed storm drainage structures and utility lines, whether publicly or privately owned, with pipe sizes, grades and direction of flow, locations and inlets, manholes or other appurtenances and appropriate invert and other elevations. If any existing utility lines are underground, the estimated location of the utility lines shall be shown.

12. Existing and proposed contours, referred to United States Coast and Geodetic Survey datum, with a contour interval of one (1) foot slopes of less than three (3%) percent; an interval of two (2) feet for slopes of more than three (3%) percent but less than fifteen (15%) percent; and an interval of five (5) feet for slopes of fifteen (15%) percent or more. Existing contours are to be indicated by dashed lines and proposed contours are to be indicated by solid lines.

13. Location of existing rock outcrops, high points, watercourses, depressions, ponds, marshes, wooded areas and other significant existing features, including previous flood elevations of watercourses, ponds and marsh areas, as determined by survey.

14. All proposed streets, with profiles, indicating grading; cross sections showing the width of roadways and sidewalks; and location and size of utility lines conforming to Town standards and specifications.

15. The location of all existing and proposed waterlines, valves and hydrants and all sewer lines or alternative means of sewerage and sewage disposal and treatment.

16. Existing and proposed stormwater drainage system. All plans shall be accompanied by a separate sketch showing all existing drainage within five hundred (500)

feet of any boundary, and all areas and any other surface area contributing to the calculations, and showing methods used in the drainage calculations.

17. Acreage, to the nearest tenth of an acre, of tract to be subdivided and the area, in square feet, of all lots.

18. Such other information or data as may be required by the approving authority, the County Planning Board or other governmental agencies for determination that the details of the subdivision are in accordance with the standards of this chapter and all other applicable laws, ordinances or resolutions.

(Ord. No. 2-9-77 § 127-19)

36-6.3 Procedural Requirements.

a. Preliminary Subdivision Plat Review.

1. The applicant shall submit the preliminary subdivision application and plat maps and payment of all required fees to the administrative officer, who shall submit copies of the preliminary plat to the following:

- (a) Approving authority attorney.
- (b) Town Engineer.
- (c) Planning Consultant.
- (d) Construction Official.
- (e) Secretary of Board of Health.
- (f) Superintendent of Public Works.
- (g) Fire Chief.
- (h) Police Chief.
- (i) Water Purveyor.
- (j) County Board of Taxation.
- (k) Board of Education.
- (l) Shade Tree Commission.
- (m) Other municipal officials and agencies as directed by the approving authority.

2. The above persons and boards shall make recommendations to the approving authority in writing within fourteen (14) days of the application submission. The approving authority shall take the recommendations into account, but shall have the authority to proceed in the absence of such recommendations if the approving authority finds such recommendations not to be essential to its determination.

3. If the preliminary plat is found to be incomplete, the applicant shall be notified by certified mail thereof within thirty-five (35) days of the date of submission, or it shall be deemed to be perfected as to content.

4. Where adjustments or changes are required in the plat submission, the applicant shall be required to modify the plat in order to qualify as a perfected application as to content and for public hearing purposes.

b. *Approving Authority Review.* The approving authority shall review the applications for preliminary subdivision approval and shall ensure that the following requirements have been met:

1. The detailed drawings, specifications and estimates meet all applicable codes and ordinances as well as recommendations, where appropriate, of municipal officials and agencies.

2. Proof has been submitted that no taxes or assessments are due or delinquent on property for which preliminary subdivision approval is sought.

3. All applicable fees and escrow funds have been paid or posted as required herein.

4. All requirements of other governmental units have been complied with.

c. *Other Governmental Approvals.* Any preliminary approval required for County subdivision approval or any other County, State or Federal approval shall be submitted by the applicant for review and approval. The approving authority shall not take final action until approval is granted by the governmental agency or a statement is issued authorizing the municipal approving authority to proceed in its application, except as provided in subsection 36-3.5 herein.

d. *Public Hearings.* Upon submission of a perfected application, the approving authority shall schedule a public hearing for the applicant. The applicant shall meet all of the requirements established in subsection 36-3.3c for public hearings.

e. *Time Period in Which to Act.* The approving authority shall grant, condition or deny preliminary subdivision approval within forty-five (45) days of receipt of a perfected and complete application or within such further time as may be consented to by the applicant for a subdivision of ten (10) or fewer lots, or ninety-five (95) days for a subdivision containing more than ten (10) lots. Failure of the approving authority to act within the prescribed time periods or to obtain an extension from the applicant, in writing, shall constitute a preliminary approval by the approving authority.

f. *Applicant's Responsibilities.* Prior to approving authority acceptance of a preliminary subdivision, the applicant shall be required to:

1. Enter into a developer's agreement, prepared by the approving authority attorney, setting forth the obligations of all parties.

2. Enter into a performance guaranty agreement, in a form satisfactory to the approving authority and Town, complying with Sections 36-13 and 36-14 where appropriate, guaranteeing performance of the developer's agreement, where appropriate.

3. Convey any easements, rights-of-way or public lands in a form and under conditions satisfactory to the approving authority and the Town.

4. Provide evidence that environmental elements relating to soil erosion and sedimentation, preservation of trees, protection of watercourses and water quality noise pollution, topographic limitation areas, wetland areas and other environmental and ecological facts have been reviewed, where appropriate, so as to minimize adverse effects. (Ord. No. 2-9-77 § 127-20; Ord. No. 2004-(O)-65)

36-6.4 Effect of Preliminary Approval.

a. If the approving authority acts favorably on a preliminary plat, the applicant shall submit four (4) copies of a correct map to the administrative officer. The Chairman and Secretary shall affix their signatures to the plat, with a notation that it has received preliminary approval, and one (1) such plat shall be returned to the applicant for compliance with final approval requirements.

b. Except as provided herein, preliminary approval of a major subdivision shall confer the following rights for a three (3) year period from the date of approval to the applicant:

1. That the general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and off-tract improvements, except that nothing herein shall be construed to prevent the

Town from modifying, by ordinance, such general terms and conditions of preliminary approval as relate to public health and safety.

2. That the applicant may submit for final approval, on or before the expiration date of preliminary approval, the whole or a section or sections of the preliminary subdivision plat, as the case may be.

3. That the applicant may apply for and the approving authority may grant extensions on such preliminary approval for additional periods of at least one (1) year but not to exceed a total extension of two (2) years, provided that if the design standards have been revised by ordinance, such revised standards shall govern beyond the three (3) year period.

c. In the case of a subdivision of fifty (50) acres or more, the approving authority may grant the rights referred to in paragraphs b.1, b.2 and b.3 above for such a period of time longer than three (3) years as shall be determined by the approving authority to be reasonable, taking into consideration the number of dwelling units and nonresidential floor area permissible under preliminary approval, economic conditions and the comprehensiveness of the development. The applicant may apply for thereafter and the approving authority may thereafter grant an extension to preliminary approval for such additional period of time as shall be determined by the approving authority to be reasonable, taking into consideration the number of dwelling units and nonresidential floor area permissible under preliminary approval, the potential number of dwelling units and nonresidential floor area of the section or sections awaiting final approval, economic conditions and the comprehensiveness of the development, provided that if the design

standards have been revised, such revised standards shall govern beyond the three (3) year period.

d. Failure to obtain final approval within the prescribed time limits as herein defined shall void the preliminary plat approval.
(Ord. No. 2-9-77 § 127-21)

36-7 FINAL APPROVAL OF MAJOR SUBDIVISIONS.

36-7.1 Submission of Application.

Ten (10) copies of an application shall be submitted to the administrative officer in writing on forms supplied by the approving authority. Receipt of an application for final approval shall be filed no less than fourteen (14) days prior to the regular meeting of the approving authority. Required fees, as provided in Section 36-3, shall be submitted with the application form. (Ord. No. 2-9-77 § 127-22)

36-7.2 Plat Requirements.

a. Ten (10) print copies shall be submitted for final subdivision approval. Unless the preliminary plat is approved without changes, the final plat shall have incorporated all changes or modifications required by the approving authority.

b. *Final Plat Details.* The final plat shall be drawn at a scale of not less than one (1) inch equals fifty (50) feet and in compliance with all the provisions of the Map Filing Act, P.L. 1960, c. 141 (N.J.S.A. 46:23-9.9 et seq.). The final plat shall show or be accompanied by the following:

1. Date, name and location of the subdivision, the name of the owner, graphic scale and reference meridian.
2. Tract boundary lines, right-of-way lines of streets, street names, easements and other rights-of-way, land reserved or dedicated to public use, all lot lines and other site lines; with accurate dimensions, bearing or deflection angles and radii, arcs and central angles of all curves; and the area of each lot.
3. The names, exact locations and widths of all existing and recorded streets intersecting or paralleling the plot boundaries within a distance of two hundred (200) feet.
4. The purpose of any easement or land reserved for or dedicated to public use shall be designated, and the proposed use of sites, other than residential, shall be noted.
5. Lot, block and street numbers as approved by the Town Engineer, including lot and block numbers of abutting property.
6. Minimum building setback line on all lots and other sites.
7. Location and description of all monuments.
8. Names of the owners of adjoining unsubdivided land.

9. Certification by the applicant's surveyor and engineer as to accuracy of details of plat.

10. Certification that the applicant is the agent or owner of the land or that the owner has given consent under an option agreement.

11. When approval of a plat is required by any other officer or body of a municipality, County or State, such approval shall be certified on the plat, or evidence shall be submitted that an application has been made for such approval.

12. Proposed final grades of all streets shall be shown to a scale of one (1) inch equals five (5) feet vertical and one (1) inch equals fifty (50) feet horizontal, on sheets twenty-two (22) inches by thirty-six (36) inches, and drawings shall include both plans and profiles and shall show elevations of all monuments referred to United States Coast and Geodetic Survey level bench marks, and such elevations shall be shown in feet and hundredths of a foot.

13. Plans and profiles of storm and sanitary sewers and water mains.

14. Certificate from the Tax Collector that all taxes are paid to date.

15. Written proof that the lands set aside or shown for easement, public use or streets are free and clear of all liens and encumbrances.

16. Contours at five-foot intervals for slopes averaging ten (10%) percent or greater and at two (2) foot intervals for land of lesser slope.
(Ord. No. 2-9-77 § 127-23)

36-7.3 Procedural Requirements.

a. Final Subdivision Plat Review.

1. The applicant shall submit the completed application and maps and the payment of all required fees to the administrative officer, who shall submit copies of same to:

- (a) Town Engineer.
- (b) Board of Health.
- (c) Construction Official.
- (d) Tax Assessor.
- (e) County Planning Board.
- (f) Approving authority attorney.
- (g) Town Clerk.

2. The above persons and boards shall make recommendations in writing to the approving authority within fourteen (14) days of the application submission.

b. Determination as to Compliance. The Town Engineer and the approving authority attorney, where appropriate, shall advise the approving authority of the following:

- 1. The nature of the improvements to be required as a condition of final approval.

2. The estimated value of the improvements installed or to be installed.
3. The nature and amount of performance or maintenance guaranties, if any, to be required as a condition to final approval.
4. The provisions of open space reservation or dedication and the standards for open space organizations.
5. The amounts to be deposited to reimburse the approving authority and the Town for costs incurred for legal, engineering, planning and other professional reviews and work, for recording fees and for any other costs anticipated by the approving agency, where applicable.

6. Any other conditions upon which final approval will be granted or conditioned.

c. *Applicant's Responsibilities.* The applicant shall be required to submit the following for the approving authority approval:

1. Maintenance guaranties, if any, for work completed prior to final approval.
2. Evidence of compliance with any other conditions imposed by the approving authority or other governmental agency or utility.
3. Proof that all required fees and escrow funds have been paid as required herein.
4. Proof that no taxes or assessments for local improvements are due or delinquent on property for which final subdivision approval is sought.

d. *Other Governmental Approvals.* Any final approval required for County subdivision approval and any other County, State or Federal approval shall be submitted by the applicant for review and approval. The approving authority shall not take any final action until approval is granted by the governmental agency or a statement is issued authorizing the municipal approving authority to proceed in its application, except as provided in subsection 36-3.5 herein.

e. *Approving Authority Action.*

1. Final approval shall be granted or denied within forty-five (45) days after submission of a complete and perfected application to the administrative officer or within such further time as may be consented to by the applicant. Failure of the approving authority to act within the period prescribed shall constitute final approval, and a certificate of the Town Clerk as to the failure of the approving authority to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval and shall be so accepted by the County Recording Officer for purposes of filing subdivision plats.

2. Unless the preliminary plat has been approved without changes, the final plat shall incorporate all changes or modifications required by the approving authority.

3. The final plat shall be accompanied by a certificate of the Town Engineer that he is in receipt of a map which shows all utilities in exact location and elevation and which identifies the utilities already installed. The certificate shall also state:

- (a) That the applicant has installed all required improvements; or

(b) That the applicant has posted a performance guaranty with the Town Clerk in sufficient amount and proper form to assure the completion of all required improvements.

4. If the approving authority approves the final plat, a notation to that effect shall be made on each plat and shall be signed by the Chairman and Secretary of the approving authority.

5. Copies of the final plat shall be filed by the approving authority with the following:

- (a) Administrative officer of the approving authority.
- (b) Town Engineer.
- (c) Construction Official.
- (d) Tax Assessor.
- (e) Town Clerk.
- (f) County Planning Board.
- (g) County Board of Taxation.
- (h) Other governmental units or municipal officials where required.

f. *Filing of Final Subdivision Approval Plats.*

1. Final subdivision approval shall expire ninety-five (95) days from the date of signing of the plat unless within such period the plat shall have been duly filed by the applicant with the County Recording Officer.

2. The approving authority may for good and sufficient cause shown extend the period of recording for an additional period not to exceed one hundred ninety (190) days from the date of signing the plat.

3. No subdivision plat shall be accepted for filing by the County Recording Officer until it has been approved by the approving authority as indicated on the instrument by the signature of the Chairman and Secretary of the approving authority or a certificate has been issued pursuant to the provisions of c. 291, P.L. 1975. The signatures of the Chairman and Secretary of the approving authority shall not be affixed until the developer has posted the guaranties required pursuant to Sections 36-13 and 36-14, where appropriate. If the County Recording Officer records any plat without such approval, such recording shall be deemed null and void and, upon request of the Town of Kearny, the plat shall be expunged from the official records.

4. In accordance with N.J.S.A. 40:55D-54c, it shall be the duty of the County Recording Officer to notify the approving authority, in writing, within seven (7) days of the filing of any plat, identifying such instrument by its title, date of filing and official number. (Ord. No. 2-9-77 § 127-24)

36-7.4 Effect of Final Approval.

a. The zoning requirements applicable to the preliminary subdivision approval first granted and all other rights conferred upon the applicant pursuant to subsection 36-6.4 of this chapter, whether conditionally or otherwise, shall not be changed for a period of two (2) years after the date of final approval, provided that the rights conferred by this section shall expire if the plat has not been duly recorded within the required time period. If the applicant has followed the standards prescribed for final approval and has duly recorded the plat as required, the approving authority may extend such period of protection for extensions of one (1) year, but not to exceed three (3) extensions. Notwithstanding any other provisions of this chapter, the granting of final approval terminates the time period of preliminary approval pursuant to subsection 36-6.4 herein for the section granted final approval.

b. In the case of a subdivision or site plan for a planned development or planned residential development or residential cluster of fifty (50) acres or conventional subdivision of one hundred fifty (150) acres or more, the approving authority may grant the rights referred to in paragraph a. of this subsection for such time period, no longer than two (2) years, as shall be determined by the approving agency to be reasonable, taking into consideration the number of dwelling units and nonresidential floor area permissible under final approval, economic conditions and the comprehensiveness of the development. The applicant may apply thereafter, and the approving authority may thereafter grant, an extension of final approval for such additional period of time as shall be determined by the approving authority to be reasonable, taking into consideration the number of dwelling units and nonresidential floor area permissible under final approval, the number of dwelling units and nonresidential floor area remaining to be developed, economic conditions and the comprehensiveness of the development.

(Ord. No. 2-9-77 § 127-25)

36-8 RESERVED.

36-9 SITE PLAN APPROVAL.

36-9.1 Application of Requirements.

a. Except as provided herein, no building or excavation permit shall be issued for a building, structure or use or any enlargement, expansion or change of use unless a site plan is first submitted and approved by the approving authority.

b. No certificate of occupancy shall be given unless all construction and conditions conform to the site plan as approved, unless conditionally approved by the approving authority as provided herein.

(Ord. No. 2-9-77 § 127-26)

36-9.2 Types of Development Requiring Site Plan Approval; Exceptions.

a. Site plan review shall not be required for single family or two (2) family detached dwellings or for such accessory uses as a private garage, toolhouse, garden and private greenhouses, swimming pools and other similar uses incidental to a single family or two (2) family detached dwelling or for similar improvements as accessory uses to a principal use.

b. Site plan approval shall not be required where:

1. Minor repairs to the interior of a building do not involve structural change or enlargement of the building, as determined by the Construction Official.

2. Renovations or alterations to the exterior design of a building or structure do not involve any enlargement of the building or major structural change, as determined by the Construction Official.

3. In the M, L-I and SKM Zones, the relocation of an underground petroleum product storage tank to an aboveground location which does not alter the arrangement of parking and circulation.

c. However, the Construction Official, at his discretion, may refer any application for a building permit to the approving authority for site plan approval, paragraphs b.1, b.2 and b.3 notwithstanding, where in the Construction Official's judgment the construction, reconstruction, alteration or change of use will affect circulation, water supply, sewage disposal, drainage, landscaping, signs, lighting, off-street parking or loading or the lack of any or all of these factors, environmental factors and other considerations as specified in this chapter.

d. Except as provided in paragraph b.1, b.2 and b.3 herein, all construction, reconstruction, alteration or enlargement of a building, structure or use or a change of use or occupancy on or in a nonconforming structure, use or lot shall require site plan approval.

(Ord. No. 2-9-77 § 127-27; Ord. No. 1999-O-5 §§ 1, 2)

36-9.3 Filing for Preliminary Approval.

a. An application shall be submitted to the administrative officer in writing, in triplicate, on forms supplied by the approving authority. Receipt of an application for preliminary site plan approval shall be filed no less than fourteen (14) days prior to the regular meeting date of the approving authority. Required fees, as provided in Section 36-3, shall be submitted with the application form.

b. The approving authority shall accept simultaneous applications for preliminary and final site plan approval where so requested by the applicant, provided that all of the conditions, requirements and safeguards established for preliminary and final site plan approval are adhered to.

(Ord. No. 2-9-77 § 127-28)

36-9.4 Procedural Requirements for Preliminary Approval.

a. *Preliminary Site Plan Review.*

1. The applicant shall submit the preliminary site plan application and plat maps and payment of all required fees to the administrative officer, who shall submit copies of the preliminary plat to the following:

(a) Approving authority attorney.

(b) Town Engineer.

(c) Planning Consultant.

- (d) Construction Official.
- (e) Secretary of Board of Health.
- (f) Superintendent of Public Works.
- (g) Fire Department.
- (h) Police Department.
- (i) Water Purveyor.
- (j) Shade Tree Commission.
- (k) Beautification and Environmental Committee.

2. The professionals and boards shall make recommendations to the approving authority in writing within fourteen (14) days of the application submission. The approving authority shall take the recommendations into account, but shall have the authority to proceed in the absence of such recommendations which are not essential to its determination.

3. If the preliminary site plan is found to be incomplete, the applicant shall be notified thereof within thirty-five (35) days of the date of submission, or it shall be deemed to be perfected as to content.

4. Where adjustments or changes are required in the site plan submission, the applicant shall be required to modify the plat in order to qualify as a perfected application as to content and for public hearing purposes.

b. *Other Governmental Approvals.* Any preliminary site plan approval required for County site plan approval or for any other County, State or Federal agency shall be submitted by the applicant for review and approval. The approving authority shall not take any final action until approval is granted by the governmental agency or a statement is issued authorizing the municipal approving authority to proceed in its application, except as provided in subsection 36-3.5.

c. *Public Hearings.* Upon submission of a perfected application, the approving authority shall schedule a public hearing for the applicant. The applicant shall meet all of the requirements established in subsection 36-3.3c for public hearings.

d. *Time Period in Which to Act.*

1. The approving authority shall grant, condition or deny preliminary site plan approval within forty-five (45) days of receipt of a perfected and complete site plan application for a site plan of ten (10) acres or less or within ninety-five (95) days of submission of a perfected and complete application for a site plan of more than ten (10) acres or within such further time as may be consented to by the applicant for both classes of site plans.

2. Failure of the approving authority to act within the prescribed time periods or to obtain an extension from the applicant, in writing, shall constitute a preliminary approval by the approving authority.

(Ord. No. 2-9-77 § 127-29)

36-9.5 Effect of Preliminary Approval.

a. Preliminary approval of a site plan shall confer upon the applicant the following rights for a three (3) year period from the date of the preliminary approval:

1. That the general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and on-tract and off-tract improvements; and any requirements peculiar to the specific site plan. The municipality may modify, by ordinance, such general terms and conditions of preliminary approval as they may relate to public health and safety, provided that such modifications are in accord with amendments adopted by ordinance subsequent to approval.

2. That the applicant may submit for final approval on or before the expiration date of preliminary approval the whole or a section or sections of the preliminary site plan.

3. That the applicant may apply for and the approving authority may grant extensions on such preliminary approval for an additional period of one (1) year, but not to exceed a total extension of two (2) years, provided that if the design standards have been revised by ordinance, such revised standards may govern.

b. In the case of a site plan for an area of fifty (50) acres or more, the approving authority may grant the rights referred to in paragraphs a.1, a.2 and a.3 above for such a time period, longer than three (3) years, as shall be determined by one (1) approving authority to be reasonable, taking into consideration the number of dwelling units and nonresidential floor area permissible under preliminary approval, economic conditions and the comprehensiveness of the development. The applicant may apply for thereafter and the approving authority may thereafter grant an extension to preliminary approval for such additional period of time as shall be determined by the approving authority to be reasonable, taking into consideration the number of dwelling units and nonresidential floor area permissible under preliminary approval, the potential number of dwelling units and nonresidential floor area of the section or sections awaiting final approval, economic conditions and the comprehensiveness of the development, provided that if the design standards have been revised, such revised standards may govern.

c. Failure to obtain final approval within the prescribed time limits as herein defined shall void the preliminary plat approval.

(Ord. No. 2-9-77 § 127-30)

36-9.6 Filing for Final Approval.

An application shall be submitted to the administrative officer in writing, in triplicate, on forms supplied by the approving authority. Receipt of an application for final approval of a site plan shall be filed no less than fourteen (14) days prior to the regular meeting date of the approving authority. Required fees, as provided in Section 36-3, shall be submitted with the application form. (Ord. No. 2-9-77 § 127-31)

36-9.7 Procedural Requirements for Final Approval.

a. *Final Site Plan Review.*

1. The applicant shall submit the final site plan application and plat maps and payment of all required fees to the administrative officer, who shall submit copies of the plat to the following:

- (a) Approving authority attorney.
- (b) Secretary of Board of Health.
- (c) Town Engineer.
- (d) Planning Consultant.
- (e) Construction Official.
- (f) Superintendent of Public Works.
- (g) Shade Tree Commission.
- (h) Beautification and Environmental Committee.

2. The professionals and boards shall make recommendations to the approving authority, in writing, within fourteen (14) days of the application submission. The approving authority shall take the recommendations into account, but shall have the authority to proceed in the absence of such recommendations if the approving authority finds such recommendations not to be essential to its determination.

b. The approving authority shall approve the application for final site plan approval with or without conditions, provided that the following requirements have been met:

1. The detailed drawings, specifications and estimates meet all applicable codes and ordinances.

2. The final plans are substantially the same as the approved preliminary site plan and conditions governing same.

3. All improvements have been installed or bonds posted to ensure the installation of improvements.

4. The applicant agrees, in writing, to all conditions of final approval.

5. Proof has been submitted that no taxes or assessment for local improvements are due or delinquent on property for which final site plan approval is sought.

6. All applicable fees have been paid prior to any final action by the approving authority.

7. Requirements of other governmental units have been complied with.

c. *Other Governmental Approvals.* Any final site plan approval required for County approval or any other County, State or Federal agency approval shall be submitted by the applicant for review and approval. The approving authority shall not take any final action until approval is granted by the governmental agency or a statement is issued authorizing the

municipal approving authority to proceed in its application, except as provided in subsection 36-3.5 herein.

d. *Time Period in Which to Act.*

1. The approving authority shall grant, condition or deny final site plan approval within forty-five (45) days of receipt of a perfected and complete site plan application or within such further time as may be consented to by the applicant.

2. Failure of the approving authority to act within the prescribed time period or to obtain an extension from the applicant, in writing, shall constitute final approval, and a certificate of the Town Clerk as to the failure of the approving authority to act shall be issued on request of the applicant, and it shall be sufficient in lieu of the written endorsement or other evidence of approval.

e. *Final Site Plan Approval Authorization.* Upon approval of the site development plan and upon compliance with all conditions, the Town Engineer and the Chairman and the Secretary of the approving authority shall be authorized to sign the plan, and the Secretary shall affix the seal of the Board. The tracing shall be and remain a permanent record of the approving authority, and the applicant shall supply to the approving authority the number of prints reasonably required for its records. A print shall be forwarded to each of the professionals identified in paragraph a. above.

(Ord. No. 2-9-77 § 127-32)

36-9.8 Effect of Final Approval.

a. Final approval shall terminate the time period of preliminary approval for the section granted final approval and shall guarantee the applicant the zoning requirements applicable to the preliminary approval and all other rights conferred upon the applicant as part of preliminary approval, which shall not be changed for a period of two (2) years after the date of final approval.

b. Final approval shall expire two (2) years from the date of final approval unless the applicant has secured a building permit to commence construction. The approving authority may extend final approval and the protection offered under subsection 36-9.7 for one (1) year. Up to three (3) such extensions may be granted.

c. In the case of a site plan for a planned development of fifty (50) acres, or conventional site plan for one hundred fifty (150) acres or more, the approving authority may extend the rights granted under final approval for such period of time, longer than two (2) years, as shall be determined by the approving authority to be reasonable, taking into consideration the number of dwelling units and nonresidential floor area permissible under final approval, economic conditions and the comprehensiveness of the development. The applicant may apply for thereafter, and the approving authority may thereafter grant, an extension of final approval for such additional time as shall be determined by the approving authority to be reasonable taking into consideration the number of dwelling units and nonresidential floor area permissible under final approval, the number of dwelling units and nonresidential floor area remaining to be developed, economic conditions and the comprehensiveness of the development.

d. The approving authority may, as a condition of final approval:

1. Grant final approval only for designated geographic sections of the development.
2. Grant final approval for certain work but require resubmission for final approval for designated elements, such as but not limited to landscaping, signs, street furniture, etc., and require approval of these elements as a prerequisite for a certificate of occupancy of zoning permit.
3. Condition the granting of a certificate of occupancy or zoning permit subject to the applicant or developer or subsequent heirs or assignees meeting certain requirements within a designated period of time, not to exceed one (1) year from the date of issuance of the certificate of occupancy or zoning permit. This may include but is not limited to the installation of improvements, reevaluation of circulation patterns, etc.
(Ord. No. 2-9-77 § 127-33)

36-9.9 Additional Site Plan Elements.

a. *Site Plan Amendments.* Amended site plan applications shall be filed with the approving authority and shall be considered at the next regular meeting date of the approving authority, provided that the amended application is received no less than fourteen (14) days before the meeting date and that the amendments are minor in nature.

b. *Compliance.*

1. All proposed improvements of development indicated on the approved site plan shall meet the requirements of all applicable codes, ordinances and specifications of the community, County, State or Federal governments and other agencies with jurisdiction over matters pertaining to site development.

2. It shall be the joint responsibility of the Town Engineer and the Construction Official to enforce their respective rules and regulations to ensure compliance with the site plan approval map and other specified conditions as may be imposed on the development.

c. *Site Plan Binding.* The site plan, as approved by the approving authority, shall be binding upon the applicant. Any changes from the approved plan shall require resubmission and reapproval by the approving authority, except as provided in paragraph a. above.

d. *Revocation of Building Permit, Certificate of Occupancy, or Zoning Permit.* In the event of a failure to comply with any condition of site plan approval, the Construction Code Official, on his own initiative or upon recommendation from the Engineer, may revoke the building permit, certificate of occupancy or zoning permit, as the case may be, and seek to enjoin the violation or take such other steps as permitted by law.
(Ord. No. 2-9-77 § 127-34; Ord. No. 2003-(O)-40)

36-10 DESIGN STANDARDS FOR SUBDIVISIONS.

36-10.1 General Requirements.

a. The applicant shall observe the following requirements and principles of land subdivision in each subdivision or portion thereof.

b. The subdivision plat shall conform to the design standards that will encourage good development patterns within the Town. Where either an Official Map or Master Plan or both have been adopted, the subdivision shall conform to the proposals and conditions shown thereon. The streets, drainage rights-of-way, school sites, public parks and playgrounds shown on an adopted Master Plan or Official Map shall be considered an approval of subdivision plats. (Ord. No. 2-9-77 § 127-35)

36-10.2 Streets.

The arrangement of streets not shown on the Master Plan or Official Map shall be such as to provide for the appropriate extension of existing streets or with a minimum right-of-way of fifty (50) feet.

a. *Minor Streets.* Minor streets shall be so designed as to discourage through traffic unless deemed necessary by the approving authority.

b. *Regional Highways.* Subdivisions abutting regional highways may be required to provide a marginal service road or reverse frontage with a buffer strip for planting, or some other means of separation of through and local traffic as the approving authority may determine to be appropriate.

c. *Pavement Width of Streets.* The pavement width of all streets shall be a minimum of thirty (30) feet for all local streets and may be greater for collector and arterial streets.

d. *Minimum Right-of-Way Width.* The right-of-way width shall be measured from lot line to lot line and shall not be less than fifty (50) feet in either case, except when shown at a greater width on the Master Plan or Official Map of the Town of Kearny or the street constitutes an extension of an existing street with a greater width than fifty (50) feet.

e. *Substandard Street Right-of-Way and Pavement Width.* In connection with subdivisions that adjoin or include existing streets that do not conform to widths as shown on the Master Plan or Official Map or the street width requirements of this chapter, the applicant shall dedicate additional right-of-way or pavement width along either one (1) or both sides of the road. If the subdivision is along one (1) side only, one-half (1/2) of the required extra width shall be dedicated.

f. *Street Grades.* Grades of arterial and collector streets shall not exceed six (6%) percent. Grades on other streets shall not exceed ten (10%) percent. No street shall have a minimum grade of less than one-half (1/2%) percent.

g. *Street Intersections.* Street intersections shall be as nearly at right angles as is possible and in no case shall be less than sixty (60°) degrees. The block corners at intersections shall be rounded at the curblines with a curve having a radius of not less than twenty (20) feet.

h. *Street Jogs.* Street jogs shall have center-line offsets of not less than one hundred twenty-five (125) feet.

i. *Reverse-Curve Tangents.* A tangent at least one hundred (100) feet long shall be introduced between reverse curves on arterial and collector streets.

j. *Street Line Deflection.* When connecting street lines deflect from each other at any one (1) point by more than ten (10°) degrees and not more than forty-five (45°) degrees, they shall be connected by a curve with a radius of not less than one hundred (100) feet for minor streets and three hundred (300) feet for arterial and collector streets.

k. *Changes in Grade.* All changes in grade shall be connected by vertical curves of sufficient radius to provide a smooth transition and proper sight distance.

l. *Cul-de-Sac Streets.* Dead-end streets (cul-de-sacs) shall not be longer than six hundred (600) feet and shall provide a turnaround at the end with a radius of not less than fifty (50) feet and tangent whenever possible to the right side of the street. If a dead-end street is of a temporary nature, a singular turnaround shall be provided and provisions made for future extension of the street and reversion of the excess right-of-way to the adjoining properties.

m. *Street Names.* No street shall have a name which will duplicate or so nearly duplicate as to be confused with the names of existing streets. The continuation of an existing street shall have the same name. The Police Department shall approve the names of all streets.

n. *Sidewalks.* Where sidewalks are required, there shall be provided a minimum walkway width of four (4) feet constructed in accordance with the requirements of the Town Engineer. (Ord. No. 2-9-77 § 127-36)

36-10.3 Block Patterns.

a. Block length and width or acreage within bounding roads shall be such as to accommodate the size of lot required in the area by the Zoning Ordinance and to provide for convenient access, circulation control and safety of street traffic.

b. In blocks of one thousand (1,000) or more feet in length, pedestrian crosswalks may be required in locations deemed necessary by the approving authority. Such walkways shall be at least ten (10) feet wide in right-of-way with a five (5)-foot-wide improved pavement surface. The walkway may also include other improvements, including streetlighting.

c. For all uses, including commercial, industrial and planned development group areas, block size shall be sufficient to accommodate the proposed uses and to permit reasonable access, circulation and fire-fighting and emergency services. (Ord. 2-9-77 § 127-37)

36-10.4 Lots.

a. Lot dimensions and areas shall not be less than the requirements of the Zoning Ordinance.

b. Insofar as is practical, side lot lines shall be at right angles to straight streets and radial to curved streets.

c. Each lot must front upon an approved and improved street with a right-of-way width of at least fifty (50) feet in width, except as provided herein.

d. Where extra width has been dedicated for widening of existing streets, lots shall begin at such extra-width line, and all setbacks shall be measured from such line.

e. Where there is a question as to the suitability of a lot or lots for their intended use due to such factors such as rock formations, drainage conditions, watercourses, historic sites, flood conditions or similar circumstances, the approving authority may, after adequate investigation, withhold approval of such lots.

(Ord. No. 2-9-77 § 127-38)

36-10.5 Public Use and Service Areas; Floodways.

a. Where a subdivision is traversed by a watercourse, drainageway, channel or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of such watercourses and such further width or construction, or both, as will be adequate for the purpose.

b. Natural features, such as trees, brooks, hilltops and views shall be preserved whenever possible in designing any subdivision containing such features.

c. Any public use as defined herein shall be of suitable size, shape and location under the provision of reservation contained herein.

d. In a large-scale development, easements along rear property lines or elsewhere for utility installation may be required. Such easements shall be at least fifteen (15) feet wide and shall be located in consultation with the utility companies or municipal departments concerned.

(Ord. No. 2-9-77 § 127-39)

36-10.6 Water Mains, Culverts and Storm and Sanitary Sewers.

All installations of water mains, culverts and storm and sanitary sewers shall be connected with an approved system and shall be adequate to handle all present and probable future development. (Ord. No. 2-9-77 § 127-40)

36-10.7 Underground Utilities.

a. For all major subdivision, the applicant shall arrange with the serving utility for the underground installation of all utility distribution supply lines and service connections in accordance with the provisions of the applicable standard terms and conditions incorporated as a part of its tariffs as the same are then on file with the State of New Jersey, Board of Public Utility Commissioners, and shall submit to the approving authority prior to the granting of final approval a written instrument from each serving utility which shall evidence full compliance with the provisions of this subsection; provided, however, that lots in such subdivisions which abut existing streets where overhead electric or telephone distribution supply lines have theretofore been installed on any portion of the streets involved may be supplied with electric and telephone service from such overhead lines, but the service connections from the utilities' overhead lines shall be installed underground. The location of access facilities for servicing the utility in the proposed subdivision shall be developed in conjunction with and as a part of the complete subdivision plan.

b. Whenever the utility is not installed in the public right-of-way, an appropriate utility easement not less than twenty (20) feet in width shall be provided.

c. The approving authority may in its discretion waive the installation of the underground utilities where such installation will result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the applicant by reason of exceptional topographic conditions or by reason of their extraordinary and exceptional situation or condition of the lands in such subdivision.

d. Whenever underground utilities are installed in accordance with the provisions hereof, fire alarm systems servicing the development shall also be installed in an appropriate subsurface distribution system connecting the necessary alarm stations. The manner of installation and the number and location of alarm stations shall be in a manner approved by the Fire Department. (Ord. No. 2-9-77 § 127-41)

36-10.8 Topsoil Protection, Soil Erosion and Sediment Control.

a. No topsoil shall be removed from the site or used as spoil. Topsoil moved during the course of construction shall be redistributed so as to provide at least six (6) inches of cover to all areas of the subdivision and shall be stabilized by seeding or planting.

b. All applications for subdivision shall be in accordance with the Kearny Soil Erosion and Sediment Control Ordinance, or, where same has not been adopted, the applicant shall meet the requirements of Chapter 251, Laws of 1975, the New Jersey Soil Erosion and Sediment Control Act. The applicant shall provide evidence of approval from the Soil Conservation Service, where applicable, prior to action by the approving authority or required public hearings. (Ord. No. 2-9-77 § 127-42)

36-11 SITE PLAN DETAILS.

36-11.1 Required Information.

a. All applications for site plan approval shall be prepared, signed and sealed by a professional engineer or architect. They shall bear the signature and seal of a licensed land surveyor as to topographic and boundary survey data.

b. All site plans shall comply with the requirements hereinafter set forth and shall contain the following information and data where applicable.

1. A title block shall be indicated in the lower right-hand corner of the plan and shall include the name and address of the record owner; the name and address of the applicant, including the block and lot number of the site; the title of the development; and the name, address, license number and seal of the person preparing the plan. If the owner is a corporation, the name and address of the president and secretary shall be submitted with the application.

2. A date block of the site plan adjacent to the title block containing the date of preparation. All subsequent revisions shall be noted and dated.

3. A key map showing the location of the tract with reference to surrounding properties, existing railroads, streets, streams, rivers, drainage rights-of-way and water or

utility rights-of-way or easements within five hundred (500) feet of the boundaries of the subject premises.

4. A scale of not less than fifty (50) feet to the inch shall be used and a graphic representation of the scale shall be displayed, and a North arrow. All distances and dimensions shall be in feet and decimals of a foot and all bearings shall be given to the nearest ten (10) seconds.

5. A map indicating all parcels and lots, together with the names of all owners of adjacent property within two hundred (200) feet of the subject premises with the respective block and lot numbers of the properties, as shown on the current municipal tax records.

6. Zone boundaries shall be shown on the site plan as they affect the parcel. Adjacent zone districts within two hundred (200) feet shall also be indicated. Such features may be shown on a separate map or as a key on the detail map itself.

7. Property lines of the entire property, required building setback lines and lines of existing and proposed streets, lots, reservations, easements and areas dedicated to public use, including grants, restrictions and rights-of-way. The total area of the subject property shall be indicated in square feet.

8. Reference to any existing covenants that are in effect or are intended to cover all or any of the tract. A copy of such covenants, deed restrictions, easements or exceptions shall be submitted with the application. If there are no known covenants, deed restrictions, easements or exceptions affecting the site, a notation to that effect shall be indicated on the site plan.

9. Location of existing buildings on the site which shall remain and all other structures, such as walls, fences, culverts, bridges, roadways, etc., with spot elevations of such structures. Structures to be removed shall be indicated by dashed lines; structures to remain shall be indicated by solid lines.

10. Right-of-way and pavement widths of all streets upon which the subject property has access. All distances as measured along the right-of-way lines of existing streets abutting the property to the nearest intersection with any other street.

11. Location plans and elevations of all proposed buildings and other structures, including required yard and setback areas, building height in feet and stories and lot coverage calculations.

12. Location, height, dimensions and details of all signs either freestanding or affixed to a building. Where signs are not to be provided, a notation to that effect shall be indicated on the site plan.

13. Location of all storm drainage structures, including rim and invert elevations, and sediment control devices and utility lines whether publicly or privately owned, with pipe sizes, grades and direction of flow; and, if any existing

utility lines are underground, the estimated location of the already underground utility lines shall be shown.

14. Existing and proposed contours, referred to United States Coast and Geodetic Survey datum, with a contour interval of one (1) foot for slopes of three (3%) percent or less; an interval of two (2) feet for slopes of more than three (3%) percent but less than fifteen (15%) percent; and an interval of five (5) feet for slopes of fifteen (15%) percent or more. Existing contours are to be shown by dashed lines and proposed contours are to be clearly indicated by solid lines.

15. Location of existing rock outcrops, high points, watercourses, depressions, woodland areas and other significant existing features, including previous flood elevations of watercourses where available and ponds and marsh areas as may be determined by survey.

16. All proposed streets with profiles indicating grading; and cross sections showing width of roadway, location and width of sidewalk, where required, and location and size of utility lines according to community standards and specifications.

17. The proposed use or uses of land and buildings and proposed location of buildings, including proposed grades. Floor space of all buildings and estimated number of employees, housing units or other capacity measurements, where required, shall also be indicated. If the precise use of the building is unknown at the time of application, an amended plan showing the proposed use shall be required prior to a certificate of occupancy.

18. All means of vehicular ingress and egress to and from the site onto public or private streets, showing the size and location of driveways and curb cuts, including the possible organization of traffic channels, acceleration and deceleration lanes, additional width and other traffic controls which may be required. Improvements, such as roads, curbs, sidewalks and other design detail, shall be indicated, including dimensions of parking stalls, access aisles, curb radii, direction of traffic flow and other conditions as may be required in the Zoning Ordinance or this chapter.

19. The location and design of any off-street parking areas or loading areas showing size and location of bays, aisles and barriers.

20. The location of all proposed waterlines, valves and hydrants and all sewer lines or alternative means of water supply or sewage disposal and treatment in conformance with the applicable municipal standards and appropriate utility companies, where applicable, including rim and invert elevations.

21. The proposed location, direction of illumination, power and time of proposed outdoor lighting in conformance with applicable standards of the community, including type of standards to be employed, radius of light and intensity in footcandles.

22. The proposed screening and landscaping and a planting plan indicating natural vegetation to remain and areas to be planted and type of vegetation to be utilized.

23. The proposed stormwater drainage system as to conform with designs based on a fifteen (15) year storm, using a one (1) hour intensity of two and zero tenths (2.0) inches. All site plans shall be accompanied by a plan sketch showing all existing drainage within five hundred (500) feet of any boundary, and all areas such as paved areas, grassed areas,

wooded areas and any other surface area contributing to the calculations and methods used in the determination.

24. Such other information or data as may be required by the approving authority in order to determine that the details of the site plan are in accordance with the standards of the Zoning Ordinance or standards contained herein.

25. Such other information or data as may be required by the approving authority for determination that the details of the site plan are in accordance with all applicable municipal, County and State ordinances and regulations.
(Ord. 2-9-77 § 127-43)

36-11.2 Legends to be Indicated.

The following legends shall be indicated on the site plan.

a. To be signed before submission:

I CONSENT TO THE FILING OF THIS SITE PLAN WITH THE _____
OF THE TOWN OF KEARNY.

Applicant Date

b. To be completed before submission:

SITE PLAN OF _____
LOT _____ BLOCK _____ ZONE _____
DATE _____ SCALE _____
APPLICANT _____
ADDRESS _____

c. To be signed before submission:

I HEREBY CERTIFY THAT I HAVE PREPARED THIS SITE PLAN AND THAT ALL DIMENSIONS AND INFORMATION ARE CORRECT.

Name

Title and License Number

d. To be signed before issuance of building permit:

APPROVED BY THE _____ OF THE TOWN OF KEARNY.

Date

Chairperson

e. To be signed before _____ approval is given:

I HAVE REVIEWED THIS SITE PLAN AND CERTIFY THAT IT MEETS ALL CODES AND ORDINANCES UNDER MY JURISDICTION.

Date

Engineer

f. To be signed before issuance of building permit:

I HEREBY CERTIFY THAT ALL REQUIRED IMPROVEMENTS HAVE BEEN INSTALLED OR THAT A PERFORMANCE GUARANTY HAS BEEN POSTED IN ACCORDANCE WITH § _____ OF THE SITE PLAN ORDINANCE.

Building Inspector

Engineer

g. To be signed prior to issuance of a certificate of occupancy:

I HEREBY CERTIFY THAT ALL THE REQUIRED IMPROVEMENTS OF THIS SITE PLAN HAVE BEEN INSTALLED IN COMPLIANCE WITH ALL APPLICABLE CODES AND ORDINANCES.

Date

Building Inspector

Date

Engineer

OCCUPANCY PERMIT ISSUED _____

Date

(Ord. No. 2-9-77 § 127-44)

36-12 DESIGN STANDARDS FOR SITE PLAN APPROVAL.

36-12.1 General Requirements.

In reviewing any application for site plan approval, conditional use approval or combinations thereof, the approving authority, advisory boards, professional advisers and the applicant shall be guided by the general and specific requirements contained herein.

a. *Circulation.*

1. The circulation system shall consider pedestrian and vehicular traffic movement within and adjacent to the plat with particular emphasis on the provision and layout of

parking areas, off-street loading and unloading and movement of people, goods and vehicles from access roads, within the site and between buildings and vehicles.

2. All parking spaces shall be usable and safely and conveniently arranged. Access to the site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the site.

b. *Building Design and Layout.* The design and layout of buildings and parking areas shall be reviewed so as to provide an aesthetically pleasing design and efficient arrangement. Particular attention shall be given to safety and fire protection; impact on surrounding development and contiguous and adjacent buildings and lands; and environmental considerations.

c. *Lighting.* Adequate lighting shall be provided to ensure safe movement of persons and vehicles and for security purposes. Directional lights shall be arranged so as to minimize glare and reflection on adjacent properties.

d. *Buffering.* Buffering, where required, shall be located around the perimeter of the site to minimize headlights of vehicles, noise, light from structures and the movement of people and vehicles and to shield activities from adjacent properties. Buffering may consist of fencing, evergreens, shrubs, bushes or deciduous trees, or combinations thereof, to achieve the stated objectives.

e. *Landscaping.* Landscaping shall be provided as part of the overall plan designed and integrated into building arrangements, topography and parking and buffering requirements. Landscaping shall include trees, bushes, shrubs, ground cover, perennials, annuals, plants, sculpture, art, street furniture and the use of building and paving materials in an imaginative manner.

f. *Signs.* Signs shall be designed so as to be aesthetically pleasing and harmonious with other signs on the site and located so as to achieve their purpose without constituting hazards to vehicles and pedestrians.

g. *Utilities.*

1. Storm drainage, sanitary waste disposal, water supply and solid waste disposal shall be reviewed and considered. Particular emphasis shall be given to the adequacy of existing systems and the need for improvements to adequately carry runoff and sewage and to maintain an adequate supply of water at sufficient pressure.

2. Solid waste disposal shall be reviewed to ensure frequent collection, aesthetic considerations and protection against vermin and rodents. All systems shall meet municipal specifications as to installation and construction.

h. *Environmental Considerations.*

1. Environmental elements relating to soil erosion and sedimentation, preservation of trees, protection of watercourses and water quality, noise pollution, topographic limitation areas, wetland areas and other environmental and ecological factors will be reviewed, where appropriate, to minimize adverse development effects.

2. Provisions shall be made for the elimination of all loud and offense noise to the general public.
 (Ord. No. 2-9-77 § 127-45)

36-12.2 Off-Street Parking Requirements.

a. *Number of Parking Spaces Required.* The number of off-street parking spaces required shall be as set forth in the following table. If determination of the number of required parking spaces results in a fractional space, the fraction shall require one (1) additional parking space.

Off-Street Parking Requirements

Use	Required Parking Spaces
Banks and savings institutions	1 for each 300 square feet of floor area or 8 for each teller window, whichever is greater
Bowling lanes	5 for each lane
Churches and other places of worship	1 for each 3 seats or 1 for each 72 inches of seating space when benches rather than seats are used
Commercial recreation (except for theaters and bowling alleys)	1 for each 125 square feet
Funeral homes and mortu-aries	10 for each parlor or slumber room
Industrial and manufac-turing uses	1 for each 500 square feet of floor area or 2 for each 4 employees in the maximum working shift, whichever is greater
Laboratory and research uses	1 for every 300 square feet of floor area
Medical or dental clinics or offices	4 for each doctor or dentist, plus 1 for each employee
Motels, hotels and motor lodges	1 for each rental unit and, in addition, compliance with the requirements for each particular additional use located on the property, such as restaurants, eating and drinking establish-ments, retail stores and meeting rooms

Off-Street Parking Requirements—Continued

Use	Required Parking Spaces
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Nursing homes, hospitals and convalescing homes	1 for every 2 beds, plus 1 per staff member and employee in the maximum work shift
Offices, business and professional (other than medical and dental)	1 for each 250 square feet of floor area, except that if an office use includes an area of 1,000 square feet or greater having more than one employee per 250 square feet, the required parking shall be 0.75 spaces for each employee providing the result is greater than that determined by floor area alone for the entire office space
Residential dwellings, except one- and two-family dwellings	2 for each dwelling unit
Restaurants, eating and drinking establishments and catering halls	1 for every 2 1/2 seats, plus 1 for each 2 employees
Restaurants, fast-food	1 for each 2 seats, plus 1 for each 2 employees in the maximum work shift, or a minimum of 40 parking spaces, whichever is greater
Retail stores, store groups, shops and shopping centers	1 for each 150 square feet of floor area where the floor area shall not exceed 2,000 square feet; and 1 for each 175 square feet of floor area where the floor area shall exceed 2,000 square feet
Senior Citizen Housing	1 for every 3 dwelling units
Taxi dispatch offices	1 for each on-site employee in the maximum working shift plus a minimum of 5 spaces for taxis
Theaters	1 for each 3 seats
Wholesale establishments, warehouses and furniture stores	1 for each 600 square feet of floor area

Off-Street Parking Requirements—Continued

Use	Required Parking Spaces
Mixed land uses	Mixed land uses in the same building shall be calculated as the sum of the individual uses unless the applicant

can demonstrate to the approving authority that the parking characteristics of the individual uses are such that the total needs of the development are less than the sum of the parts, and the number of spaces to be provided will satisfy the lesser need

Other uses not provided herein

To be determined by the approving authority

b. *Location of Parking Spaces.* The approving authority shall approve the location of all proposed parking spaces on the site and shall take into consideration the size and topography of the site; visibility from the site to the adjoining street, as well as within the parking area; conditions of safety relating to the movement of people and vehicles; and the glare, noise, dust and other similar considerations.

c. *Parking Area Design Standards.*

1. *Aisle Width.* Provision shall be made for the safe and adequate circulation of pedestrians and vehicles within and adjoining the subject property. The width of all aisles providing direct access to individual parking stalls shall be in accordance with the standards established in the following table. Only one-way traffic shall be permitted in aisles of less than twenty-four (24) feet.

Parking Angle (degrees)	Minimum Aisle Width (feet)
0 (parallel)	12
30	12
45	13
60	18
90 (perpendicular)	24

d. *Size of Parking Stalls.*

1. Parking stalls for churches, community buildings and social halls, hospitals and nursing homes, manufacturing and industrial uses, business and professional offices and wholesale and warehouse establishments shall have a minimum area of one hundred eighty (180) square feet of space, exclusive of aisles, and shall measure nine (9) feet in width and twenty (20) feet in length.

2. For all other uses, there shall be a minimum area of two hundred (200) square feet of space, exclusive of aisles, which shall measure ten (10) feet in width and twenty (20) feet in length.

e. *Circulation Within Parking Area.*

1. Except for attendant parking, all parking spaces shall be designed free and clear of any obstruction to individual parking stalls.

2. Such parking spaces shall be located in such a fashion as to permit all vehicles to exit in a safe and orderly manner. Under no condition shall vehicles be permitted to back out of a parking lot driveway or otherwise block the free movement of traffic within the parking area or specific points of safety control, such as fire hydrants, doorways, elevators or other similar locations.

3. Aisle widths and circulation patterns shall be designed to permit emergency and service vehicles, such as delivery trucks, solid waste collection vehicles and the like, to have reasonable access to and space for their intended functions.

4. Pedestrian circulation within a parking area shall be, to as great an extent as possible, separated from vehicle traffic. Safety zones, crossing points and sidewalk areas, where warranted, shall be provided.

5. The use of pedestrian carts or other similar accessory vehicles shall not be permitted to be retained within the driving area of the parking facility.

f. *Driveway Design Criteria.*

1. Location of Driveways.

(a) All entrance and exit driveways to a public or private street shall be so located as to afford maximum safety to the roadway and to provide for safe and convenient ingress and egress and to minimize conflict with the flow of traffic.

(b) In no case shall there be permitted unrestricted access along the length of a street or streets upon which the parking area abuts.

(c) Where a site is located at the intersection of two (2) streets, no driveway entrance or exit shall be located within fifty (50) feet of the point where the curb return of the street intersection and the curblines meet.

(d) No part of any driveway shall be located closer than twenty (20) feet to any other driveway on an adjoining parcel nor shall more than one (1) driveway be located closer than forty (40) feet to another driveway on the

same site as measured from the closest edge of any two (2) driveways along the same right-of-way line.

(e) No entrance or exit driveway shall be located on a traffic circle or on a ramp of an interchange or within fifty (50) feet of the beginning of any ramp or other portion of an interchange.

2. Geometric Design. The geometric design of a driveway connection to a public or private street shall be governed by sound traffic engineering principals. The following guidelines are utilized in preparing a geometric design, but some deviation may be necessitated from time to time due to the many variables encountered in the course of preparing a design. The applicant should be aware, therefore, that although the driveway layout may conform to these guidelines, conditions may dictate deviation from them, and requirements of the municipal engineer shall be final.

(a) Two-way operation. Driveways used for two-way operation will intersect a public or private street at an angle as near to ninety (90°) degrees as site conditions will permit and in no case will be less than sixty (60°) degrees.

(b) One-way operation. Driveways used for vehicles in one (1) direction of travel (right-turn only) shall not form an angle smaller than forty-five (45°) degrees with a public street.

(c) The dimensions of driveways shall be designed to adequately accommodate the volume and character of vehicles anticipated to be attracted daily onto the land development for which a site plan is prepared. The required maximum and minimum dimensions for driveway connection to a public or private street at ninety (90°) degrees are indicated in the following table. Driveways serving large volumes of daily traffic or traffic over twenty-five (25%) percent of which is truck traffic shall be required to utilize high-to-maximum dimensions. Driveways serving low daily traffic volumes or traffic less than twenty-five (25%) percent of which is truck traffic shall be permitted to use low-to-minimum dimensions.

Driveway Width, Depressed Curb and Curb Return Radius Standards

One-Way Operation

	Driveway Width (feet)	Depressed Curb (feet)	Curb Return Radius (feet)	
			Min.	Max.
3- to 10- family residences	12-15	32-35	20	30
Over 10-family residences	15-16	35-38	20	30
Commercial and industrial	15-30	35-50	35	45
Service stations	20-30	35-50	20	35

Two-Way Operation

	Driveway Width (feet)	Depressed Curb (feet)	Curb Return Radius (feet)	
			Min.	Max.
3- to 10- family residences	22-26	44-50	20	30
Over 10-family residences	24-30	46-52	25	35
Commercial and industrial	30-50	50-70	35	45
Service stations	40-50	50-60	20	35

Driveways connecting to a public or private street at an angle shall have the same widths as shown in the above table. The width of depressed curbs and radius of curb returns shall provide for the sharpest turning radii of vehicles using the driveway, keeping the vehicles within their prescribed lanes.

(d) Any vertical curve on a driveway shall be flat enough to prevent the dragging of any vehicle undercarriage.

(e) Should the sidewalk be so close to the curb at a depressed curb driveway as to cause the ramp to be too steep and be likely to cause undercarriage drag, the sidewalk shall be appropriately lowered to provide a suitable ramp gradient.

g. *Maintenance of Off-Street Parking and Loading Areas.* Every parcel of land used as a public or private off-street parking or loading area shall be maintained in good condition, free of hazards and deterioration. All pavement areas, sidewalks, curbs, drainage facilities, lighting, bumpers, guardrails, markings, signs, landscaping and other improvements shall be maintained in workable, safe and good condition.

h. *Waiver of Parking Requirements.* If any applicant can clearly demonstrate to the approving authority that, because of the nature of the operation or use, the parking requirements of this section are unnecessary or excessive, the approving authority shall have the power to approve a site plan showing less paved parking area than required by this section; provided, however, that a landscaped area of sufficient size to meet the deficiency shall be set aside and reserved for the purpose of meeting future off-street parking requirements in the event that a change of use of the premises shall make such additional off-street parking spaces necessary.

i. *Other Off-Street Parking Requirements.*

1. Limitations as to Use. All off-street parking areas shall be used solely for the parking of passenger automobiles, and no commercial repair work or service of any kind shall be constructed on such parking lot.

2. Nonavailability. At any time that the required off-street parking facilities cease to be available as required, the certificate of occupancy for the building or buildings built in conjunction with such parking areas shall be canceled and become null and void.

j. *Off-Street Parking Construction.*

1. All off-street parking areas shall be graded and drained so as to dispose of all surface water in a manner so as not to unreasonably impair the surroundings.

2. All off-street parking areas, aisles and driveways shall be surfaced with asphalt, bituminous or cement binder pavement according to specifications established for this purpose by the Town Engineer.

3. All parking areas and access drives shall be edged by a concrete curb or Belgian block set at least six (6) inches above the paved surface.

(Ord. No. 2-9-77 § 127-46; Ord. No. 4-10-91; Ord. No. 1999-O-5 §§ 4, 5)

36-12.3 Off-Street Loading Requirements.

a. In any district, in connection with every building or building group or part thereof hereinafter erected which is to be utilized by industrial and commercial uses or requires the distribution of material or merchandise by vehicles and for any residential development containing thirty (30) or more dwelling units and for large-scale public and quasi-public uses, there shall be provided and maintained, on the same zone lot with such building, off-street loading spaces in accordance with the requirements of the following table.

Off-Street Loading Requirements

Land Use ¹	Floor Area (square feet)	
	At Which First Berth is Required	At Which Second Berth is Required ²
Industrial:		
Manufacturing	5,000	40,000
Warehouse	5,000	40,000
Laboratory, research	5,000	40,000
Commercial:		
Wholesale	5,000	40,000
Retail	5,000	20,000
Service establishments	5,000	40,000
Commercial recreation	5,000	100,000
Restaurants	2,000	25,000
Office buildings	5,000	100,000
Hotels	10,000	100,000
Funeral homes	10,000	100,000
Residential:		
Apartment buildings	20,000	100,000
Institutional, public:		
Schools	10,000	100,000
Hospitals, nursing homes	10,000	100,000
Auditoriums, arenas	10,000	100,000

Notes:

¹In the case of a multiple-use building, the amount of off-street loading space required shall be equal to the sum of the parts unless same can be demonstrated to be in excess, as shall be subject to determination by the approving authority.

²An additional berth shall be required for each additional amount of square feet as indicated as required between the need for one- and two-berth intervals.

b. Each such loading space shall not be less than twelve (12) feet in width and thirty-five (35) feet in length, depending upon the functions to be performed. The overall floor-to-ceiling

height or clear height distance shall not be less than twelve (12) feet, which may be increased where required.

c. Except for required buffer areas, each such loading space may occupy any required side or rear yard but shall not be located in the required front yard. When adjoining a residential use, institutional use or place of general assembly, a suitably screened or landscaped buffer shall be provided.

d. Off-street loading spaces shall not be located within any fire prevention zone, within twenty-five (25) feet of any fire hydrant or within ten (10) feet of any stairway, doorway, elevator or other general means of entry to and from a building for the general public, nor shall it block or in any way interfere with the free flow of pedestrians from any means of ingress or egress, nor shall it interfere with the free flow of pedestrians or vehicles. All such loading spaces shall be appropriately indicated by sign or other visual communication as to the location.

e. All loading and unloading operations shall be conducted entirely within the boundaries of the lot concerned, and no vehicle or conveyance shall in any manner use public streets, sidewalks or rights-of-way for loading or unloading operations other than for ingress or egress to the lot.

(Ord. 2-9-77 § 127-47)

36-12.4 Lighting and Signs.

a. *Lighting.* In connection with every site plan, the applicant shall submit plans for all proposed exterior lighting. These plans shall include the location, type of light, radius of light and intensity in footcandles. The following design standards shall be followed:

1. The style of the light and light standard shall be consistent with the architectural style of the principal building.

2. The maximum height of freestanding lights shall not exceed the height of the principal building or thirty-five (35) feet, whichever is less.

3. All lights shall be shielded to restrict the maximum apex angle of the cone of illumination to one hundred fifty (150°) degrees.

4. Where lights along property lines will be visible to adjacent property, the lights shall be appropriately shielded.

5. Spotlight-type fixtures attached to buildings shall be avoided, except where properly screened from adjacent properties.

6. Freestanding lights shall be so located and protected as to avoid being damaged by vehicles.

7. Lighting shall not be permitted which requires flashing or intermittent illumination. Lighting which requires change in color, intensity or hue shall likewise be prohibited. The lighting shall in no way interfere with, detract from or diminish in any way the effectiveness of any traffic signal or similar safety or warning device.

b. *Signs.*

1. Each site plan application shall include a sign plan showing the specific design, location, size, construction and illumination.

2. If the applicant is unable to provide the details for signs, the approving authority shall condition its approval upon receipt of same prior to the issuance of a certificate of occupancy and shall be subject to the Town Sign Ordinance.

(Ord. No. 2-9-77 § 127-48)

36-12.5 Landscaping and Buffer Areas.

a. *Landscaping.* A landscaping plan shall be submitted with each site plan application. The plan shall identify existing and proposed trees, shrubs, bushes, plant material, ground cover and natural features such as boulders and rock outcroppings.

b. *Buffer Areas.* Buffers, including fences, landscaping, berms and mounds, shall be used to minimize any adverse impacts or nuisances from the site to adjacent areas and shall be provided:

1. Along property lines shielding various uses from one another.

2. Where interior roads or driveways run parallel with roadways exterior to the site.

3. Where parking areas abut other properties.

4. In the general area of refuse storage areas, loading and unloading areas and outdoor storage areas.

5. As wind-break areas.

6. To shield areas from deleterious noise or other adverse conditions.

(Ord. No. 2-9-77 § 127-49)

36-12.6 Utility Improvements.

a. *Gas, Electric and Telephone Service.*

1. Gas, electric and telephone service shall be provided by the applicant in concert with the appropriate public utility providing such service. The service on the site shall be provided as a part of an underground system.

2. If such facilities cannot be reasonably provided due to topographic or geologic condition of the land or due to technological circumstances, and where the applicant can adequately demonstrate the lack of feasibility of same to the satisfaction of the approving authority, a waiver of this requirement may be granted.

3. Where existing utility lines, such as electric and telephone poles, exist off-tract and require relocation as a result of the proposed development, the approving authority shall be assured that the relocation will not create or maintain any hazardous or dangerous conditions.

b. *Water Supply and Sanitary Sewage Disposal.* Adequate provisions for water supply and sanitary sewage disposal shall be indicated. The facilities shall include and not be limited to approvals, where appropriate, of the engineer of the serving utility company, the Department of

Health and the Fire Department. The locations of all proposed fire hydrants or similar facilities shall be indicated on the plan, and the areas shall provide for appropriate fire lanes or protective areas which shall not be impeded by parking or standing vehicles or other obstructions, particularly in commercial centers.

c. *Stormwater Drainage.*

1. Provisions shall be made for the safe and adequate drainage of surface runoff waters in and from the premises so that flooding and erosion of the property and the property of others will be prevented.

2. Each site plan submitted to the approving authority shall be reviewed by the Town Engineer to establish requirements to prevent adverse drainage conditions both on and off the site.

3. The drainage systems shall be designed in conformance to accepted engineering standards. To facilitate the review of proposed drainage facilities for development, design calculations prepared by the applicant's engineer shall accompany the application.

4. The design considerations shall include but not be limited to drainage areas, runoff calculations, storm drains, pipelines, inlet designs and manholes.

5. Unless otherwise stipulated by the Municipal Engineer, drainage facilities shall be designed on the basis of a fifteen (15)-year storm, using a one (1)-hour intensity of two (2) inches.

(Ord. No. 2-9-77 § 127-50)

36-12.7 Street Improvements.

a. *Curbing.*

1. General.

(a) Where curbing is lacking an applicant for site plan approval shall install curbing along the extent of all property fronting public and private streets in accordance with municipal standards and specifications.

(b) The Municipal Engineer may require curbing within parking areas in order to facilitate drainage and provide separation between pedestrian and vehicular movement.

2. Alignment and Grade. Curb grading and alignment is to be determined as established in the area unless otherwise required by the Municipal Engineer.

3. Curbing at Driveway Openings. Where a proposed driveway is to serve any land development of fifty (50) or more parking spaces, curbing need not be carried across the driveway opening as a depressed curb, but rather may be swept back as curb returns. Where the driveway serves a facility having less than fifty (50) parking spaces, a depressed curb driveway shall be utilized.

b. *Street Widening.*

1. The right-of-way width, measured from lot line to lot line, shall not be less than fifty (50) feet, except when shown at a greater width on the Master Plan or Official Map or

when the street constitutes an extension of an existing street with a greater width than fifty (50) feet.

2. In connection with site plans that adjoin or include existing streets that do not conform to widths as shown on the Official Map or Master Plan or are less than fifty (50) feet in width, the applicant shall dedicate additional width along either one (1) or both sides of the road. If the site plan is along one (1) side only, one-half (1/2) of the required difference in roadway width shall be dedicated.

c. *Sidewalks.*

1. Each land development requiring site plan approval may be required to provide a sidewalk within the street right-of-way.

2. Pedestrian walkways or sidewalks may also be required for any development of fifty (50) or more parking spaces within the parking area to provide convenient and safe access for pedestrian circulation.

3. Sidewalks shall be constructed of concrete, brick or other similar material and shall be at least four (4) feet in width.

4. Sidewalks between parking areas and principal structures, along aisles and driveways and wherever pedestrian traffic shall occur shall be raised six (6) inches or more above the parking area except when crossing streets or driveways. Sidewalks, when constructed along a building, shall be located not less than three (3) feet from the building. (Ord. No. 2-9-77 § 127-51)

36-12.8 Refuse Collection and Storage.

a. Provision shall be made for the proper storage and collection of refuse. All such storage shall be maintained within the confines of an enclosed building or structure and shall be reasonably accessible for vehicular collection on the site or shall be appropriately screened and landscaped where outdoor storage is necessary.

b. The Board of Health shall approve the location and method of collection on the site. (Ord. No. 2-9-77 § 127-52)

36-12.9 Additional Design Standards.

a. *Retaining Walls.* Retaining walls shall be designed to be safe and adequate for the purpose intended. The walls shall not detract from the aesthetic beauty of the site when constructed and to this end shall be fenced or landscaped in accordance with the plans to be approved by the approving authority.

b. *Outdoor Storage.* Outdoor storage, where permitted, shall be suitably located and approved by the approving authority, which shall consider the relationship of such areas to adjacent properties and roadways; provided, however, that in all such cases where storage is permitted, such areas shall be suitably screened.

c. *Design Standards for Physically Handicapped Persons.*

1. Applicability. In accordance with Chapters 220, 221 and 224 of the Laws of 1975, all plans and specifications for the construction or remodeling of any public building, as defined herein, shall provide facilities for the physically handicapped.

2. Design of Facilities and Buildings.

(a) All public buildings shall contain at least one (1) principal entrance accessible to and usable by physically handicapped persons, which entrance shall be either ramped or at ground level.

(b) On each floor open to the public, at least one (1) water closet shall be provided for each sex. In general, toilet facilities shall be provided to accommodate wheelchair occupants, which facilities shall include adequate stall door width, grab rails, sufficient space and appropriate height.

(c) A drinking fountain of suitable height and extension for wheelchair occupants shall be provided on every floor open to the public.

(d) In a multi-story building an elevator sufficient in size to accommodate a wheelchair shall be provided.

(e) At least one (1) public telephone at a height accessible to wheelchair occupants shall be provided.

3. Parking Lot Design.

(a) A minimum of one (1%) percent of the total number of parking spaces, but not less than two (2) parking spaces, shall be designed and designated for physically handicapped persons. The spaces shall be most accessible and approximate to the building or buildings which the parking spaces serve.

(b) Each space or group of spaces shall be identified with a clearly visible sign displaying the international symbol of access along with the following wording: "These spaces reserved for physically handicapped drivers."

(c) Each space shall be twelve (12) feet wide to allow room for persons in wheelchairs or on braces or crutches to get in and out of either side of an automobile onto level, paved surface suitable for wheeling and walking.

(d) Where possible, such spaces shall be located so that persons in wheelchairs or using braces or crutches are not compelled to wheel or walk behind parked cars.

(e) Where applicable, curb ramps shall be provided to permit handicapped people access from parking area to sidewalk.

4. Sidewalks. A sidewalk hereafter constructed or reconstructed on public or private property for public use shall be constructed in a manner that will facilitate use by physically handicapped persons. At points of intersection between pedestrian and motorized lines of travel, and at other points where necessary to avoid abrupt changes in grade, a sidewalk shall slope gradually to street level so as to provide an uninterrupted line of travel.

(Ord. No. 2-9-77 § 127-53)

36-13 ON-TRACT IMPROVEMENTS.

36-13.1 Improvements Required; Certification.

a. Before recording final subdivision plats or approving site plan plats, the approving authority shall require that the applicant shall have installed or shall have furnished performance guaranties for the installation of on-tract improvements in accordance with Town specifications as follows: streets, street signs, grading, pavement, curbs, gutters, sidewalks, walkways, streetlighting, shade trees, water mains, fire hydrants, culverts, storm sewers, sanitary sewers or other means of sewage disposal, drainage structures, erosion control and sedimentation control devices, public improvements of open space and surveyors' monuments as required by the Map Filing Act, P.L. 1960, c. 141 (N.J.S.A. 46:23-9.9 et seq.).

b. All such required improvements shall be certified by the Town Engineer unless the applicant shall have filed a performance guaranty sufficient in amount to cover the cost of all such improvements or uncompleted portions thereof as estimated by the Town Engineer. (Ord. No. 2-9-77 § 127-54)

36-13.2 Performance Guaranty.

a. The performance guaranty shall be furnished in favor of the Town in an amount equal to one hundred twenty (120%) percent of the cost of installation for improvements it may deem necessary or appropriate as specified in subsection 36-13.1.

b. The amount of any performance guaranty may be reduced by the Governing Body, by resolution, when portions of the improvements have been certified by the Town Engineer to have been completed. The time allowed for installation of the improvements for which the performance guaranty has been provided may be extended by the approving authority and the Governing Body by resolution.

c. If the required improvements are not completed or corrected in accordance with the performance guaranty, the obligor and surety, if any, shall be liable thereon to the Town for the reasonable cost of the improvements not completed or corrected, and the Town may, either prior to or after the receipt of the proceeds thereof, complete such improvements.

d. When all of the required improvements have been completed, the obligor shall notify the Governing Body, in writing, by certified mail addressed in care of the Town Clerk, of the completion of the improvements and shall send a copy thereof to the Town Engineer. Thereupon, the Town Engineer shall inspect all of the improvements and shall file a detailed report, in writing, with the Governing Body, indicating either approval, partial approval or rejection of the improvements with a statement of reasons for any rejection. If partial approval is indicated, the cost of the improvements rejected shall be set forth.

e. The Governing Body shall either approve, partially approve or reject the improvements on the basis of the report of the Town Engineer with the advice and consent of the approving authority and shall notify the obligor, in writing, by certified mail, of the contents of the report and the action of the approving authority with relation thereto, not later than sixty-five (65) days after receipt of the notice from the obligor of the completion of the improvements. Where partial

approval is granted, the obligor shall be released from all liability pursuant to its performance guaranty, except for that portion adequately sufficient to secure provision of the improvements not yet approved.

Failure of the Governing Body to send or provide such notification to the obligor within sixty-five (65) days shall be deemed to constitute approval of the improvements, and the obligor and surety, if any, shall be released from all liability, pursuant to such performance guaranty.

f. If any portion of the required improvements are rejected, the approving authority may require the obligor to complete such improvements, and, upon completion, the same procedure of notification as set forth in this section shall be followed.

g. Nothing herein, however, shall be construed to limit the right of the obligor to contest, by legal proceedings, any determination of the Governing Body or the Town Engineer.

h. The performance guaranty shall be approved by the Governing Body as to form, sufficiency and execution. Such performance guaranty shall run for a period to be fixed by the approving authority. However, with the consent of the owner and the surety, if there is one, the Governing Body may, by resolution, extend the term of such performance guaranty for an additional period not to exceed one (1) year.

(Ord. No. 2-9-77 § 127-55)

36-13.3 Maintenance Guaranty.

a. Prior to the acceptance of any improvement herein, a maintenance guaranty shall be furnished in favor of the Town of Kearny for a period not exceeding two (2) years after final acceptance of the improvement, in an amount not to exceed fifteen (15%) percent of the cost of the improvement.

b. Simultaneously with the submission of a maintenance guaranty, the applicant shall file with the Town as-built drawings accurately showing the location, profile and size of all storm drains, catch basins, sanitary sewers, water mains and all utility and service connections constructed in the subdivision or site plan.

(Ord. No. 2-9-77 § 127-56)

36-13.4 Other Governmental Agencies or Public Utilities.

In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance guaranty to another governmental agency, no performance or maintenance guaranty, as the case may be, shall be required by the Town for such utilities or improvements. (Ord. No. 2-9-77 § 127-57)

36-13.5 Inspection and Approval.

All improvements listed in Sections 36-13 and 36-14 shall be subject to inspection and approval by the Town Engineer, who shall be notified by the applicant at least twenty-four (24) hours prior to the start of construction. No underground installation shall be covered until inspected and approved. (Ord. No. 2-9-77 § 127-58)

36-14 OFF-TRACT IMPROVEMENTS.

36-14.1 Applicability, Improvements Required.

a. Any subdivision or site plan requiring off-tract improvements, as defined herein, shall comply with the provisions of this section.

b. An off-tract improvement shall be one (1) or more required improvements which are necessary for the successful completion of a development in the interest of furthering the public health, safety and general welfare, and where the improvements are located off-tract.

c. An off-tract improvement shall be required where either the existing facilities serving the area or subarea are already operating at a deficient level of service, or the inclusion of a new development will make such present level of service deficient according to engineering standards utilized in determining such levels of service.

d. The proportionate contribution of any such off-tract improvement to the applicant shall be reasonably related to the relative benefit or use of the total area so served.

e. Under the conditions of this chapter, off-tract improvements shall be limited to new or improved water distribution, sanitary sewage disposal and distribution and stormwater and drainage distribution facilities and all necessary appurtenances thereto; utility easements to new or improved street and right-of-way widths, traffic regulation and control devices, intersection improvements, utility relocation where not provided elsewhere and other traffic, circulation and safety factors which are directly related to the property or properties in question.

f. Off-tract improvements shall not include the improvement costs for an entire utility system or street system or major segment thereof, including sewage treatment plants or water supply or treatment facilities or other similar undertaking, unless the improvement is significantly affected by the property or properties in question.

(Ord. No. 2-9-77 § 127-59)

36-14.2 Determinations of Approving Authority.

a. Each subdivision or site plan requiring approving authority action shall be subject to a determination and findings as follows:

1. That certain off-tract improvements are or are not necessary to implement such subdivision or site plan.

2. That, in instances where off-tract improvements are required, the terms and conditions which shall be imposed upon the applicant shall ensure the successful and reasonable implementation of same.

b. Regulations governing off-tract improvements shall be based upon circulation and comprehensive utility plans pursuant to the adopted Master Plan by the Kearny Planning Board or adopted utility or circulation plans of Kearny or other governmental or utility authority.

c. In the event that the approving authority determines that one (1) or more improvements constitute an off-tract improvement, the approving authority, by resolution, shall notify the

Governing Body of same, specifying the authority's recommendation relative to the estimated cost of same, the owner or the developer's pro-rata share of the cost and possible methods or means to implement same, including but not limited to performance guaranties, cash contributions, development agreements and other forms of surety.

d. Where an applicant pays the amount determined as the pro-rata share under protest, he shall institute legal action within one (1) year of such payment in order to preserve the right to a judicial determination as to the fairness and reasonableness of such amount.

e. The approving authority shall not take any final action on a preliminary subdivision or site plan until all aspects of such conditions have been mutually agreed to by both the applicant and the Governing Body, and a written resolution to that effect by the Governing Body has been transmitted to the approving authority.

(Ord. No. 2-9-77 § 127-60)

36-14.3 Methods of Implementation.

a. *Performance and Maintenance Guaranties.* Where a performance of maintenance guaranty or other surety is required in connection with an off-tract improvement, the applicant shall be required to follow the same procedure and requirements as specified in Section 36-13.

b. *Development Agreement.* Where a development agreement is required governing off-tract improvements or other conditions as may be required by this chapter or by the approving authority, the agreement shall be in accordance with subsections 36-6.3e and 36-9.7b.4. The agreement may specify the amount of cash contributions, if any, the method of payment and the obligation or obligations to be undertaken by the Town of Kearny.

c. *Cash Contributions.*

1. **When Not Required.** Cash contributions for off-tract improvements shall not be required under the following terms or conditions:

(a) Where other County or State agencies or utility authorities have jurisdiction over the subject improvement and require a cash contribution, guaranty or other surety of the applicant in lieu of such conditions imposed by Kearny; or

(b) Where a benefit assessment or other similar tax levy is imposed upon the applicant and other landowners similarly situated within a designated service area for the off-tract improvements provided; or

(c) Where the applicant, where legally permissive, can undertake the improvements in lieu of the municipality subject to standards and other conditions as may be imposed by Kearny.

2. **Methods of Payment.**

(a) Where a cash contribution is required, the contribution will be deposited with the Town Treasurer of the Town of Kearny with transmittal letters forwarded to the Governing Body, the Town Engineer and the approving authority.

(b) Any and all moneys received by the Town Treasurer shall be deposited in an escrow account for the purpose of undertaking the improvements specified. Where

such improvements are not undertaken or initiated for a period of ten (10) years, the funds shall be returned to the owner of record of the properties, provided that the conditions specified in paragraph c.1 have not been imposed. Where such condition does exist, funds held in escrow will be returned as soon as practical to the owner of record of the properties.
(Ord. No. 2-9-77 § 127-61)

36-14.4 Criteria for Determination of Cost to Applicant.

Where a cash contribution or other financial distribution is determined, the following criteria shall be utilized in determining the proportionate share of such improvement to the applicant.

a. Street widening, alignment, corrections, channelization of intersections, construction of barriers, new or improved traffic signalization, signs, curbs, sidewalks, trees, utility improvements not covered elsewhere, the construction of new streets and other similar street or traffic improvements: The applicant's proportionate cost shall be in the ratio of the estimated peak-hour traffic generated by the proposed property or properties to the sum of the present deficiency in peak-hour traffic capacity of the present facility and the estimated peak-hour traffic generated by the proposed development. The ratio thus calculated shall be increased by ten (10%) percent for contingencies.

b. Water distribution facilities, including the installation of new water mains, the extension of existing water mains, the relocation of such facilities and the installation of other appurtenances associated therewith: The applicant's proportionate cost shall be in the ratio of the estimated daily use of water from the property or properties, in gallons per day, for the existing system or subsystem and the estimated daily use of water for the proposed development. The ratio thus calculated shall be increased by ten (10%) percent for contingencies.

c. Sanitary sewage distribution facilities, including the installation, relocation or replacement of collector and interceptor sewers and the installation, relocation or replacement of other appurtenances associated therewith: The applicant's proportionate cost shall be in the ratio of the estimated daily flow, in gallons, to the sum of the present deficient capacity for the existing system or subsystem and the estimated daily flow from the proposed project or development. In the case where the peak flow from the proposed development may occur during the peak flow period for the existing system, the ratio shall be the estimated peak flow rate from the proposed development, in gallons per minute, to the sum of the present peak flow deficiency in the existing system or subsystem and the estimated peak flow rate from the proposed development. The greater of the two (2) ratios thus calculated shall be increased by ten (10%) percent for contingencies and shall be the ratio used to determine the cost to the applicant.

d. Stormwater and drainage improvements, including the installation, relocation or replacement of transmission lines, culverts and catch basins, and the installation, relocation or replacement of other appurtenances associated therewith: The applicant's proportionate cost shall be in the ratio of the estimated peak surface runoff as proposed to be delivered into the existing system, measured in cubic feet per second, to the sum of the existing peak-hour flow, in cubic feet per second, deficient for the existing system and the estimated flow as proposed to be delivered. The ratio thus calculated shall be increased by ten (10%) percent for contingencies.
(Ord. No. 2-9-77 § 127-62)

36-15 OPEN SPACE AND PUBLIC AREAS.

36-15.1 Standards for Establishment of Open Space Organizations.

a. Under the provisions of this chapter and State statutes, the Town of Kearny, other governmental agencies, the Board of Education and State, County and other public bodies can be designated to maintain and accept public open space for recreational or conservational use. These public agencies can accept and maintain such open space, provided that the dedication is not conditioned upon the same being made available to public use.

b. Where a subdivision or site plan indicates an area is to be utilized for open space, this chapter shall require that the applicant provide for an organization for the ownership and maintenance of the open space for the benefit of owners or residents of the development, if the open space is not dedicated to the municipality or other governmental agency. Such organization shall not be dissolved and shall not dispose of any open space, by sale or otherwise, except to an organization conceived and established to own and maintain the open space for the benefit of such development, and thereafter such organization shall not be dissolved or dispose of any of its open space without first offering to dedicate the same to the Town of Kearny wherein the land is located.

c. In the event that such organization shall fail to retain the open space in reasonable order and condition, the administrative officer designated by resolution to administer this section may serve written notice upon the owners of the development setting forth the manner in which the organization has failed to maintain the open space in reasonable condition, and the notice shall include a demand that such deficiencies of maintenance be cured within thirty-five (35) days thereof and shall state the date and place of a hearing thereon, which shall be held within fifteen (15) days of the notice. At such hearing, the designated municipal body or administrative officer may modify the terms of the original notice as to deficiencies and may give a reasonable extension of time not to exceed sixty-five (65) days within which they may be cured. If the deficiencies set forth in the original notice or in the modification thereof shall not be cured within thirty-five (35) days or any permitted extension thereof, the Town, in order to preserve the open space and maintain the same for a period of one (1) year, may enter upon and maintain such land. The entry and maintenance shall not vest in the public any rights to use the open space except when the same is voluntarily dedicated to the public by the owners. Before the expiration of the year, the designated Town Body or officer, as the case may be, shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the open space, call a public hearing, upon fifteen (15) days' written notice to such organization and to the owners of the development, to be held by such Town Body or officer, at which hearing such organization and the owners of the development shall show cause why such maintenance by the Town shall not, at the election of the Town, continue for a succeeding year. If the designated Town Body or officer shall determine that such organization is ready and able to maintain the open space in reasonable condition, the Town shall cease to maintain the open space at the end of the year. If the Town Body or officer shall determine that such organization is not ready and able to maintain the open space in reasonable condition, the Town may, in its discretion, continue to maintain the open space during the next succeeding year, subject to a similar hearing and

determination in each year thereafter. The decision of the Town Body or officer in any case shall constitute a final administrative decision subject to judicial review.

d. If a municipal body or officer is not designated by resolution to administer this section, the Governing Body shall have the same powers and be subject to the same restrictions as provided in this section.

e. The cost of such maintenance by the Town shall be assessed pro rata against the properties within the development that have a right of enjoyment of the open space in accordance with assessed value at the time of imposition of the lien, and shall become a lien and tax on the properties and be added to and be a part of the taxes to be levied and assessed thereon and shall be enforced and collected, with interest, by the same officers and in the same manner as other taxes.

(Ord. No. 2-9-77 § 127-63)

36-15.2 Reservation of Public Areas.

a. *Applicability.*

1. If the Master Plan of Kearny or the Official Map of the Town provides for the reservation of designated streets, public drainageways, flood control basins or public areas within the proposed development, before approving a subdivision or site plan, the approving authority may further require that such streets, ways, basins or areas be shown on the plat in locations and sizes suitable to their intended uses. The approving authority may reserve the location and extent of such streets, ways, basins or areas shown on the plat for a period of one (1) year after the approval of the final plat or within such further time as may be agreed to by the developer.

2. Unless during such period or extension thereof the government entity having jurisdiction shall have entered into a contract to purchase or institute condemnation proceedings according to law for the fee or a lesser interest in the land comprising such streets, ways, basins or areas, the applicant shall not be bound by such reservations shown on the plat and may proceed to use such land for private use in accordance with applicable development regulations. The provisions of this section shall not apply to the streets and roadways, flood control basins or public drainageways necessitated by the subdivision or land development and required for final approval.

b. *Compensation to Applicant.* The applicant shall be entitled to just compensation for actual loss found to be caused by such temporary reservation and deprivation of use. In such instances, unless a lesser amount has previously been mutually agreed upon, just compensation shall be deemed to be fair market value of an option to purchase the land reserved for the period of reservation, provided that determination of such fair market value shall include but not be limited to consideration of real property taxes apportioned to the land reserved and prorated for the period of reservation. The applicant shall be compensated for the reasonable increased cost of legal, engineering or other professional services incurred in connection with obtaining subdivision or site plan approval caused by the resolution.

c. Procedure for payment: to be determined by the Governing Body.

(Ord. No. 2-9-77 § 127-64)

36-16 APPEALS AND PENALTIES.

36-16.1 Appeals to Governing Body.

a. Any interested party may appeal to the Governing Body the affirmative decision of the Board of Adjustment approving an application pursuant to N.J.S.A. 40:55D-70d with a simultaneous application for a major or minor subdivision or site plan approval. Such appeal shall be made within ten (10) days of the date of publication of such final decision as provided by law. The appeal to the Governing Body shall be made by serving the Town Clerk, in person or by certified mail, with a notice of appeal specifying the grounds thereof, the name and address of the appellant and the name and address of the attorney, if represented. Such appeal shall be decided by the Governing Body only upon the record established before the approving authority.

b. *Notice of the Meeting.* Notice of the meeting to review the record below shall be given by the Governing Body by personal service or certified mail to the appellant, to those entitled to notice of a decision and to the approving authority at least ten (10) days prior to the date of the meeting. The parties may submit oral and written argument on the record at such meeting, and the Governing Body shall provide for verbatim recording and transcripts of such meeting.

c. *Decision by Governing Body.* In accordance with N.J.S.A. 40:55D-17C the Governing Body shall conclude a review of the record below not later than ninety-five (95) days from the date of publication of notice of the decision below pursuant to N.J.S.A. 40:55D-10 unless the applicant consents in writing to an extension of such period. Failure of the Governing Body to hold a hearing and conclude a review of the record below and to render a decision within such specified period shall constitute a decision affirming the action of the Board.

d. *Action of Governing Body.* The Governing Body may reserve, remand or affirm, wholly or in part, or modify the final decision of the approving authority. The affirmative vote of a majority of the full authorized membership of the Governing Body shall be necessary to reverse, remand or modify any final action of either Board.

e. *Appeal Stays all Proceedings.* An appeal to the Governing Body shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made unless the approving authority certifies to the Governing Body, after the notice of appeal shall have been filed with the approving authority, that by reasons of fact stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by an order of the Superior Court with notice to the approving authority from whom the appeal is taken and on good cause shown.

f. *Copy of Decision; Notice.* The Governing Body shall mail a copy of the decision to the appellant or, if represented, to his attorney, without separate charge, and for a charge of twenty-five (\$0.25) cents per page to any interested party who requested it, not later than ten (10) days after the date of the decision. A brief notice of the decision shall be published in the official newspaper of Kearny. Such publication shall be arranged by the appellant. The period of time in which an appeal to a court of competent jurisdiction may be made shall run from the date of the first publication by the appellant.

(Ord. No. 2-9-77 § 127-65; Ord. No. 12-13-89)

36-16.2 Violations and Penalties.

a. *Premature Sale.* If, before final subdivision approval has been granted, any person transfers or sells or agrees to transfer or sell, except pursuant to an agreement expressly conditioned on final subdivision approval, as owner or agent, any land which forms a part of a subdivision for which Town approval is required, such person shall be subject to a penalty of five hundred (\$500.00) dollars. Each lot disposition shall be deemed a separate violation.

b. *Civil Action.* In addition to the foregoing, the Town of Kearny may institute and maintain a civil action:

1. For injunctive relief.

2. To set aside and invalidate any conveyance made pursuant to such a contract of sale if a certificate of compliance has not been issued in accordance with law.

c. *Effect on Transferee, Purchaser or Grantee.* In any such action, the transferee, purchaser or grantee is entitled to a lien upon the portion of the land from which the subdivision was made that remains in the possession of the developer or his assigns or successors to secure the return of any deposits made or purchase price paid and, also, to a reasonable search fee, survey expense and title closing expense, if any. Any such action must be brought within two (2) years after the date of the recording of the instrument of transfer, sale or conveyance of the land or within six (6) years, if unrecorded.

d. *Other Penalties.* Any person, firm or corporation violating any of the provisions of this chapter shall, upon conviction, be punished by a fine not to exceed five hundred (\$500.00) dollars for each offense. Each day that a violation occurs or is committed shall constitute a separate offense.

(Ord. No. 2-9-77 § 127-66)

36-17 AMENDMENTS AND INTERPRETATION.

36-17.1 Amendments.

All amendments of this chapter shall be adopted in accordance with the provisions of New Jersey law. (Ord. No. 2-9-77 § 127-67)

36-17.2 Interpretation of Provisions.

In the interpretation and the application of the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of the health, safety, morals and general welfare. It is not intended to interfere with or abrogate or annul other rules, regulations or ordinances, provided that where this chapter imposed greater restrictions, the provisions of this chapter shall apply. (Ord. No. 2-9-77 § 127-68)

36-18 STORMWATER MANAGEMENT CONTROL REGULATIONS.

36-18.1 Scope and Purpose.

a. *Policy Statement.* Flood control, groundwater recharge, and pollutant reduction through nonstructural or low impact techniques shall be explored before relying on structural BMPS. Structural BMPs should be integrated with nonstructural stormwater management strategies and proper maintenance plans. Nonstructural strategies include both environmentally sensitive site design and source controls that prevent pollutants from being placed on the site or from being exposed to stormwater. Source control plans should be developed based upon physical site conditions and the origin, nature, and the anticipated quantity or amount of potential pollutants. Multiple stormwater management BMPs may be necessary to achieve the established performance standards for water quality, quantity and groundwater recharge.

b. *Purpose.* It is the purpose of this section to establish minimum stormwater management requirements and controls for "major developments" as defined in subsection 36-18.2.

c. *Applicability.*

1. This section shall be applicable to all site plans and subdivisions for the following major developments that require preliminary or final site plan or subdivision review:

(a) Nonresidential major developments; and

(b) Aspects of residential major developments that are not pre-empted by the Residential Site Improvement Standards at N.J.A.C. 5:21.

2. This section shall also be applicable to all major developments undertaken by the Town of Kearny.

d. *Compatibility with Other Permit and Ordinance Requirements.* Development approvals issued for subdivisions and site plans pursuant to this section are to be considered an integral part of development approvals under the subdivision and site plan review process and does not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated by any other applicable code, rule, act, or ordinance. In their interpretation and application, the provisions of this section shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. This section is not intended to interfere with, abrogate, or annul any other ordinances, rule or regulation, statute, or other provision of law except that, where any provision of this section imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, the more restrictive provisions or higher standards shall control.

(Ord. No. 2005-(O)-30 § 1)

36-18.2 Definitions.

Unless specifically defined below, words or phrases used in this section shall be interpreted so as to give them the meaning they have in common usage and to give this section its most reasonable application. The definitions below are the same as or based on the corresponding definitions in the Stormwater Management Rules at N.J.A.C. 7:8-1.2.

Compaction shall mean the increase in soil bulk density.

Core shall mean a pedestrian-oriented area of commercial and civic uses serving the surrounding municipality, generally including housing and access to public transportation.

County review agency shall mean an agency designate by the County Board of Chosen Freeholders to review municipal stormwater management plans and implementing ordinance(s). The County review agency may either be:

A County planning agency; or

A County water resource association created under N.J.S.A. 58:16A-55.5, if the ordinance or resolution delegates authority to approve, conditionally approve, or disapprove municipal stormwater management plans and implementing ordinances.

Department shall mean the New Jersey Department of Environmental Protection.

Designate Center shall mean a State Development and Redevelopment Plan Centers as designated by the State Planning Commission such as urban, regional, town, village, or hamlet.

Design engineer shall mean a person professionally qualified and duly licensed in New Jersey to perform engineering services that may include, but not necessarily be limited to, development of project requirements, creation and development of project design and preparation of drawings and specifications.

Development shall mean the division of a parcel of land into two (2) or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure, any mining excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, by any person, for which permission is required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. In the case of development of agriculture lands, development means: any activity that requires a State permit; any activity reviewed by the County Agricultural Board (CAB) and the State Agricultural Development Committee (SADC), and municipal review of any activity not exempted by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.

Drainage area shall mean a geographic area within which stormwater, sediments, or dissolved materials drain to a particular receiving waterbody or to a particular point along a receiving waterbody.

Empowerment Neighborhood shall mean a neighborhood designated by the Urban Coordinating Council" in consultation and conjunction with" the New Jersey Redevelopment Authority pursuant to N.J.S.A. 55:19-69.

Environmentally critical areas shall mean an area or feature which is of significant environmental value, including but not limited to: stream corridors; natural heritage priority sites; habitat of endangered or threatened species; large areas of contiguous open space or upland forest; steep slopes; and well head protection and groundwater recharge areas. Habitats of endangered or threatened species are identified using the Department's Landscapes Project as approved by the Department's Endangered and Non-game Species Program.

Erosion shall mean the detachment and movement of soil or rock fragments by water, wind, ice or gravity.

Impervious surface shall mean a surface that has been covered with a layer of material so that is highly resistant to infiltration by water.

Infiltration shall mean the process by which water seeps into the soil from precipitation.

Major development shall mean any "development" that provides for ultimately disturbing one (1) or more acres of land. Disturbance for the purpose of this rule is the placement of impervious surface or exposure and/or movement of soil or bedrock or clearing, cutting, or removing of vegetation.

Municipality shall mean any city, borough, town, township or village.

Node shall mean an area designated by the State Planning Commission concentrating facilities and activities which are not organized in a compact form.

Nutrient shall mean a chemical element or compound, such as nitrogen or phosphorus, which is essential to and promotes the development of organisms.

Person shall mean any individual, corporation, company, partnership, firm, association, the Town of Kearny, or political subdivision of this State subject to municipal jurisdiction pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

Pollutant shall mean any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, medical wastes, radioactive substance (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, agricultural, and construction waste or runoff, or other residue discharged directly or indirectly to the land, ground waters or surface waters of the State, or to a domestic treatment works. "Pollutant" includes both hazardous and nonhazardous pollutants.

Recharge shall mean the amount of water from precipitation that infiltrates into the ground and is not evapotranspired.

Sediment shall mean solid material, mineral or organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water or gravity as a product of erosion.

Site shall mean that lot or lots upon which a major development is to occur or has occurred.

Soil shall mean all unconsolidated mineral and organic material of any origin.

State Development and Redevelopment Plan Metropolitan Planning Area (PAI) shall mean an area delineated on the State Plan Policy Map and adopted by the State Planning Commission that is intended to be the focus for much of the State's future redevelopment and revitalization efforts.

State Plan Policy Map shall mean the geographic application of the State Development and Redevelopment Plan's goals and statewide policies, and the official map of these goals and policies.

Stormwater shall mean water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface, or is captured by separate storm sewers or other sewage or drainage facilities, or conveyed by snow removal equipment.

Stormwater runoff shall mean waterflow on the surface of the ground or in storm sewers, resulting from precipitation.

Stormwater management basin shall mean an excavation or embankment and related areas designed to retain stormwater runoff. A stormwater management basin may either be normally dry (that is, a detention basin or infiltration basin), retain water in a permanent pool (a retention basin) or be planted mainly with wetland vegetation (most constructed stormwater wetlands).

Stormwater management measure shall mean any structural or nonstructural strategy, practice, technology, process, program, or other method intended to control or reduce stormwater or to eliminate illicit or illegal non-stormwater discharges into stormwater conveyances.

Tidal flood hazard area shall mean a flood hazard area, which may be influenced by stormwater runoff from inland areas, but which is primarily caused by the Atlantic Ocean.

Urban Coordinating Council Empowerment Neighborhood shall mean a neighborhood given priority access to State resources through the New Jersey Redevelopment Authority.

Urban Enterprise Zone shall mean a zone designated by the New Jersey Enterprise Zone Authority pursuant to the New Jersey Enterprise Urban Zones Act, N.J.S.A. 52:27H-60 et seq.

Urban Redevelopment shall mean previously developed portions of areas:

- a. Delineated on the State Plan Policy Map (SPPN1) as the Metropolitan Planning Area (PA 1), Designated Centers, Cores or Nodes;
- b. Designated as CAFRA Centers, Cores or Nodes;
- c. Designated as Urban Enterprise Zones; and
- d. Designated as Urban Coordinating Council Empowerment Neighborhoods.

Waters of the State shall mean the ocean and its estuaries, all springs, streams, wetlands, and bodies of surface or ground water, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

Wetlands or *wetland* shall mean an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrolytic vegetation.

(Ord. No. 2005-(O)-30 § 2)

36-18.3 General Standards.

a. *Design and Performance Standards for Stormwater Management Measures.*

1. Stormwater management measures for major development shall be developed to meet the erosion control, groundwater recharge, stormwater runoff quantity, and stormwater runoff quality standards in subsection 36-18.4. To the maximum extent practicable, these standards shall be met by incorporating nonstructural stormwater management strategies into the design. If these strategies alone are not sufficient to meet these standards, structural stormwater management measures necessary to meet these standards shall be incorporated into the design.

2. The standards in this section apply only to new major development and are intended to minimize the impact of stormwater runoff on water quality and water quantity in receiving water bodies and maintain groundwater recharge. The standards do not apply to new major development to the extent that alternative design and performance standards are applicable under a regional stormwater management plan or Water Quality Management Plan adopted in accordance with Department rules.

(Ord. No. 2005-(O)-30 § 3)

36-18.4 Stormwater Management Requirements for Major Development.

a. The development shall incorporate a maintenance plan for the stormwater management measures incorporated into the design of a major development in accordance with subsection 36-18.10.

b. Stormwater management measures shall avoid adverse impacts of concentrated flow on habitat for threatened and endangered species as documented in the Department Landscape Project or Natural Heritage Database established under N.J.S.A. 13:1B-15.147 through 15.150 particularly *Helonias bullata* (swamp pink) and/or *Clemmys muhlenbergi* (bog turtle)

c. The following linear development projects are exempt from the groundwater recharge, stormwater runoff quantity, and stormwater runoff quality requirements of subsection 36-18.4f. and g.

1. The construction of an underground utility line provided that the disturbed areas are revegetated upon completion;

2. The construction of an aboveground utility line provided that the existing conditions are maintained to the maximum extent practicable; and

3. The construction of a public pedestrian access, such as a sidewalk or trail with maximum width of fourteen (14) feet, provided that the access is made of permeable material.

d. A waiver from strict compliance from the groundwater recharge, stormwater runoff quantity, and stormwater runoff quality requirements of subsection 36-18.4f and g. may be obtained for the enlargement of an existing public roadway or railroad; or the construction or enlargement of a public pedestrian access, provided that the following conditions are met:

1. The applicant demonstrates that there is a public need for the project that cannot be accomplished by any other means;

2. The applicant demonstrates through an alternatives analysis, that through the use of nonstructural and structural stormwater management strategies and measures, the option selected complies with the requirements of subsection 36-18.4f. and g. to the maximum extent practicable;

3. The applicant demonstrates that in order to meet the requirements of subsection 36-18.4f. and g., existing structures currently in use, such as homes and buildings, would need to be condemned; and

4. The applicant demonstrates that it does not own or have other rights to areas, including the potential to obtain through condemnation lands not falling under paragraph d,3 above within the upstream drainage area of the receiving stream that would provide additional opportunities to mitigate the requirements of subsection 36-18.4f. and g. that were not achievable on-site.

e. *Nonstructural Stormwater Management Strategies.*

1. To the maximum extent practicable, the standards in subsection 36-18.4f. and g. shall be met by incorporating nonstructural stormwater management strategies set forth at subsection 36-18.4e. into the design. The applicant shall identify the nonstructural measures incorporated into the design of the project. If the applicant contends that is not feasible for engineering, environmental, or safety reasons to incorporate any nonstructural stormwater management measures identified in paragraph 2 below into the design of a particular project, the applicant shall identify the strategy considered and provide a basis for the contention.

2. Nonstructural stormwater management strategies incorporated into site design shall:

(a) Protect areas that provide water quality benefits or areas particularly susceptible to erosion and sediment loss;

(b) Minimize impervious surfaces and break up or disconnect the flow of runoff over impervious surfaces;

(c) Maximize the protection of natural drainage features and vegetation;

(d) Minimize the decrease in the "time of concentration" from pre-construction to post construction. "Time of concentration" is defined as the time it takes for runoff to travel from the hydraulically most distant point on the watershed to the point of interest within a watershed;

(e) Minimize land disturbance including cleaning and grading;

(f) Minimize soil compaction;

(g) Provide low-maintenance landscaping that encourages retention and planting of native vegetation and minimizes the use of lawns, fertilizers and pesticides;

(h) Provide vegetated open-channel conveyance systems discharging into and through stable vegetated areas;

(i) Provide other source controls to prevent or minimize the use or exposure of pollutants at the site, in order to prevent or minimize the release of those pollutants into stormwater runoff. Such source controls include, but are not limited to:

(1) Site design features that help to prevent accumulation of trash and debris in drainage systems, including features that satisfy subsection 36-18.4e,3 below;

(2) Site design features that help to prevent discharge of trash and debris from drainage systems;

(3) Site design features that help to prevent and/or contain spills or other harmful accumulations of pollutants at industrial or commercial developments; and

(4) When establishing vegetation after land disturbance, applying fertilizer in accordance with the requirements established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., and implementing rules.

3. Site design features identified under subsection 36-18.4e,2(i)(2) above shall comply with the following standard to control passage of solid and floatable materials through storm drain inlets. For purposes of this paragraph, "solid and floatable materials" means sediment, debris, trash, and other floating, suspended, or settleable solids. For exemptions to this standard see subsection 36-18.4e,3(c) below.

(a) Design engineers shall use either of the following grates whenever they use a grate in pavement or another ground surface to collect stormwater from that surface into a storm drain or surface water body under that grate:

(1) The New Jersey Department of Transportation (NJDOT) bicycle safe grate, which is described in Chapter 2.4 of the NJDOT Bicycle Compatible Roadways and Bikeways Planning and Design Guidelines (April 1996); or

(2) A different grate, if each individual clear space in that grate has an area of no more than seven (7.0) square inches, or is no greater than 0.5 inches across the smallest dimension.

Examples of grate subject to this standard include grates in grate inlets, the grate portion (noncurb-opening portion) of combination inlets, grates on storm sewer manholes, ditch gates, trench grates, and grates of spacer bars in slotted drains. Examples of ground surfaces include surfaces of roads (including bridge), driveways, parking areas, bikeways, plazas, sidewalks, lawns, fields, open channels, and stormwater basin floors.

(b) Whenever design engineers use a curb-opening inlet, the clear space in that curb opening (or each individual clear space, if the curb opening has two (2) or more clear spaces) shall have an area of no more than seven (7.0) square inches, or be no greater than two (2.0) inches across the smallest dimension.

(c) This standard does not apply:

(1) Where the review agency determines that this standard would cause inadequate hydraulic performance that could not practicably be overcome by using additional or larger storm drain inlets that meet these standards;

(2) Where flows from the water quality design storm as specified in subsection 36-18.4g,1 are conveyed through any device (e.g., end of pipe netting facility, manufactured treatment device, or a catch basin hood) that is designed, at a minimum, to prevent delivery of all solid and floatable materials that could not pass through one of the following:

[a] A rectangular space four and five-eighths ($4 \frac{5}{8}$) inches long and one and one-half ($1 \frac{1}{2}$) inches wide (this option does not apply for outfall netting facilities); or

[b] A bar screen having a bar spacing of 0.5 inches.

(3) Where flows are conveyed through a trash rack that has parallel bars with one (1) inch spacing between the bars, to the elevation of the water quality design storm as specified in subsection 36-18.4g,1; or

(4) Where the New Jersey Department of Environmental Protection determines, pursuant to the New Jersey Register of Historic Places Rules at N.J.A.C. 7:47.2(c), that action to meet this standard is an undertaking that constitutes an encroachment or will damage or destroy the New Jersey Register listed historic property.

4. Any land area used as a nonstructural stormwater management measure to meet the performance standards in subsection 36-18.4f. and g. shall be dedicated to a government agency, subjected to a conservation restriction filed with the appropriate County Clerk's office, or subject to an approved equivalent restriction that ensures that measure or an equivalent stormwater management measure approved by the reviewing agency is maintained in perpetuity.

5. Guidance for nonstructural stormwater management strategies is available in the New Jersey Stormwater Best Management Practices Manual. The BMP Manual may be obtained from the address identified in subsection 36-18.7, or found on the Department's website at www.njstormwater.org.

f. *Erosion Control, Groundwater Recharge and Runoff Quantity Standards.*

1. This subsection contains minimum design and performance standards to control erosion, encourage and control infiltration and groundwater recharge, and control stormwater runoff quantity impacts of major developments.

(a) The minimum design and performance standards for erosion control are those established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. and implementing rules.

(b) The minimum design and performances standards for groundwater recharge are as follows:

(1) The design engineer shall, using the assumptions and factors for stormwater runoff and groundwater recharge calculations at subsection 36-18.5 either:

[a] Demonstrate through hydrologic and hydraulic analysis that the site and its stormwater management measures maintain one hundred (100%) percent of the average annual preconstruction groundwater recharge volume for the site; or

[b] Demonstrate through hydrologic and hydraulic analysis that the increase of stormwater runoff volume from preconstruction to post-construction for the 2-year storm is infiltrated.

(2) This groundwater recharge requirement does not apply to projects within the "urban redevelopment area," or to projects subject to paragraph (3) below.

(3) The following types of stormwater shall not be recharged:

[a] Stormwater from areas of high pollutant loading. High pollutant loading areas are areas in industrial and commercial developments where solvents and/or petroleum products are loaded/unloaded, stored, or applied, areas where pesticides are loaded/unloaded or stored; areas where hazardous materials are expected to be present in greater than "reportable quantities" as defined by the United States Environmental Protection Agency (EPA) at 40 CFR 302.4; areas where recharge would be inconsistent with Department approved remedial action work plan or landfill closure plan and areas with high risks for spills or toxic materials, such as gas stations and vehicle maintenance facilities; and

[b] Industrial stormwater exposed to "source material." "Source material" means any material (s) or machinery, located at an industrial facility that is directly or indirectly related to process, manufacturing or other industrial activities, which could be a source of pollutants in any industrial stormwater discharge to groundwater. Source materials include, but are not limited to, raw materials; intermediate products; final products; waste materials; by-products; industrial machinery and fuels, and lubricants, solvents, and detergents that are related to process, manufacturing, or other industrial activities that are exposed to stormwater.

(4) The design engineer shall assess the hydraulic impact on the groundwater table and design the site so as to avoid adverse hydraulic impacts. Potential adverse hydraulic impacts include, but are not limited to, exacerbating a naturally or seasonally high water table so as to cause superficial ponding, flooding of basements, or interference with the proper operation of subsurface sewerage disposal systems and other subsurface structures in the vicinity or downgradient of the groundwater recharge area.

(c) In order to control stormwater runoff quantity impacts, the design engineer shall, using the assumptions and factors for stormwater runoff calculations at subsection 36-18.5, complete one of the following:

(1) Demonstrate through hydrologic and hydraulic analysis that for stormwater leaving the site, post-construction runoff hydrographs for the two, 10- and 100-year storm events do not exceed, at any point in time, the pre-construction runoff hydrographs for the same storm events;

(2) Demonstrate through hydrologic and hydraulic analysis that there is no increase, as compared to the preconstruction condition, in the peak runoff rates of stormwater leaving the site for 2-, 10-, and 100-year storm events and that the increased volume or change in timing of stormwater runoff will not increase flood damage at or downstream of the site. This analysis shall include the analysis of impacts or existing land uses and projected land uses assuming full development under existing zoning and land use ordinance in the drainage area;

(3) Design stormwater management measures so that the post-construction peak runoff rates for the 2-, 10- and 100-year storm events are 50, 75 and 80 percent, respectively, of the preconstruction peak runoff rates. The percentages apply only to the post-construction stormwater runoff that is attributable to the portion of the site on which the proposed development or project is to be constructed. The percentages shall not be applied to post-construction stormwater runoff into tidal flood hazard areas if the increased volume of stormwater runoff will not increase flood damages below the point of discharge; or

(4) In tidal flood hazard areas, stormwater runoff quantity analysis in accordance with paragraphs (1), (2) and (3) above shall only be applied if the increased volume of stormwater runoff could increase flood damages below the point of discharge.

2. Any application for a new agricultural development that meets the definition of major development at subsection 36-18.2 shall be submitted to the appropriate Soil Conservation District for review and approval in accordance with the requirements of this section and any applicable Soil Conservation District guidelines for stormwater runoff quantity and erosion control. For the purpose of this section, "agricultural development" means land uses normally associated with the production of food, fiber, and livestock for sale. Such uses do not include the development of land for the processing or sale of food and the manufacturing of agriculturally related products.

g. *Stormwater Runoff Quality Standards.*

1. Stormwater management measures shall be designed to reduce the post-construction load of total suspended solids (TSS) in stormwater runoff by eighty (80%) percent of the anticipated load from the developed site, expressed as an annual average. Stormwater management measures shall only be required for water quality control if an additional one-quarter (1/4) acre of impervious surface is being proposed on a development site. The requirement to reduce TSS does not apply to any stormwater runoff in a discharge regulated under a numeric effluent limitation for TSS imposed under the New Jersey

Pollution Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A, or in a discharge specifically exempt under a NJPDES permit from this requirement. The water quality design storm is 1.25 inches of rainfall in two (2) hours. Water quality calculations shall take into account the distribution of rain from the water quality design storm, as reflected in Table 1. The calculation of the volume of runoff may take into account the implementation of nonstructural and structural stormwater management measures.

Table 1: Water Quality Design Storm Distribution			
Time (Minutes)	Cumulative Rainfall (Inches)	Time (Minutes)	Cumulative Rainfall (Inches)
0	0.0000	65	0.8917
5	0.0083	70	0.9917
10	0.0166	75	1.0500
15	0.0250	80	1.0840
20	0.0500	85	1.1170
25	0.0750	90	1.1500
30	0.1000	95	1.1750
35	0.1330	100	1.2000
40	0.1660	105	1.2250
45	0.2000	110	1.2334
50	0.2583	115	1.2417
55	0.3583	120	1.2500
60	0.6250		

2. For purposes of TSS reduction calculations, Table 2 below presents the presumed removal rates for certain BMPs designed in accordance with the New Jersey Stormwater Best Management Practices Manual. The BMP Manual may be obtained from the address identified in subsection 36-18.7, or found on the Department's website at www.njstormwater.org. The BMP Manual and other sources of technical guidance are listed in subsection 36-18.7. TSS reduction shall be calculated based on the removal rates for the BMPs in Table 2 below. Alternative removal rates and methods of calculating removal rates may be used if the design engineer provides documentation demonstrating the capability of these alternative rates and methods to the review agency. A copy of any approved alternative rate or method of calculating the removal rate shall be provided to the Department at the following address: Division of Watershed Management, New Jersey Department of Environmental Protection, P.O. Box 418, Trenton, New Jersey 08625-0418.

3. If more than one (1) BMP in series is necessary to achieve the required eighty (80%) percent TSS reduction for a site, the applicant shall utilize the following formula to calculate TSS reduction:

$$R = A+B-(AXB)/100$$

Where

R = total TSS percent load removal from application of both BMPS, and

A = the TSS percent removal rate applicable to the first BMP

B = the TSS percent removal rate applicable to the second BMP

Table 2: TSS Removal Rates for BMPs	
Best Management Practice	TSS Percent Removal Rate
Bioretention Systems	90
Constructed Stormwater Wetland	90
Extended Detention Basin	40-60
Infiltration Structure	80
Manufactured Treatment Device	See subsection 36-18.6c.
Sand Filter	80
Vegetative Filter Strip	60-80
Wet Pond	50-90

4. If there is more than one (1) on-site drainage area, the eighty (80%) percent TSS removal rate shall apply to each drainage area, unless the runoff from the subareas converge on site in which case the removal rate can be demonstrated through a calculation using a weighted average.

5. Stormwater management measures shall also be designed to reduce, to the maximum extent feasible, the post-construction nutrient load of the anticipated load from the developed site in stormwater runoff generated from the water quality design storm. In achieving reduction of nutrients to the maximum extent feasible, the design of this site shall include nonstructural strategies and structural measures that optimize nutrient removal while still achieving the performance standards in subsection 36-18.4f. and g.

6. Additional information and examples are contained in the New Jersey Stormwater Best Management Practices Manual, which may be obtained from the address identified in subsection 36-18.7.

7. In accordance with the definition of FW1 at N.J.A.C. 7:9B-1.4, stormwater management measure shall be designed to prevent any increase in stormwater runoff to waters classified as FW1.

8. Special water resource protection areas shall be established along all waters designated Category One at N.J.A.C. 7:9B, and perennial or intermittent streams that drain in to or upstream of the Category One waters as shown on the USGS Quadrangle Maps or in the County Soil Surveys, within the associated HUC14 drainage area. These areas shall be established for the protection of water quality, aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, and exceptional fisheries significance of those established Category One waters. These areas shall be designated and protected as follow:

- (a) The applicant shall preserve and maintain a special water resource protection area in accordance with one (1) of the following:

(1) A 300-foot special water resource protection area shall be provided on each side of the waterway, measured perpendicular to the waterway from the top of the bank outwards or from the centerline of the waterway where the bank is not defined, consisting of existing vegetation or vegetation allowed to follow natural succession is provided.

(2) Encroachment within the designated special water resource protection area under paragraph (1) above shall only be allowed where previous development or disturbance has occurred (for example, active agricultural use, parking area or maintained lawn area). The encroachment shall only be allowed where applicant demonstrates that the functional value and overall condition of the special water resource protection area will be maintained to the maximum extent practicable. In no case shall the remaining special water resource protection area be reduced to less than one hundred fifty (150) feet as measured perpendicular to the top of bank of the waterway or centerline of the waterway where the bank is undefined. All encroachments proposed under this subparagraph shall be subject to review and approval by the Department.

(b) All stormwater shall be discharged outside of and flow through the special water resource protection area and shall comply with the Standard for Off-Site Stability in the "Standards for Soil Erosion and Sediment Control in New Jersey," established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq.

(c) If stormwater discharged outside of and flowing through the special water resource protection area cannot comply with the Standard for Off-Site Stability in the "Standards for Soil Erosion and Sediment Control in New Jersey," established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., then the stabilization measures in accordance with the requirements of the above standards may be placed within the special water resource protection area, provided that:

(1) Stabilization measures shall not be placed within one hundred fifty (150) feet of the Category One Waterway;

(2) Stormwater associated with discharges allowed by this section shall achieve a ninety-five (95%) percent TSS post-construction removal rate;

(3) Temperature shall be addressed to ensure no impact on the receiving waterway;

(4) The encroachment shall only be allowed where the applicant demonstrates that the functional value and overall condition of the special water resource protection area will be maintained to the maximum extent practicable;

(5) A conceptual project design meeting shall be held with the appropriate Department staff and Soil Conservation District staff to identify necessary stabilization measures; and

(6) All encroachments proposed under this section shall be subject to review and approval by the Department.

(d) A stream corridor protection plan may be developed by a regional stormwater management planning committee as an element of a regional stormwater management plan, or by a municipality through an adopted municipal stormwater management plan. If a stream corridor protection plan for a waterway subject to subsection 36-18.4g,8 has been approved by the Department of Environmental Protection, then the provisions of the plan shall be the applicable special water resource protection area requirements for that waterway. A stream corridor protection plan for a waterway subject to paragraph g,8 shall maintain or enhance the current functional value and overall condition of the special water resource protection area as defined in paragraph g,8(a)(1) above. In no case shall a stream corridor protection plan allow the reduction of the Special Water Resource Protection Area to less than one hundred fifty (150) feet as measured perpendicular to the waterway subject to this subsection.

(e) Paragraph g,8 does not apply to the construction of one (1) individual single family dwelling that is not part of a larger development on a lot receiving preliminary or final subdivision approval on or before February 2, 2004, provided that the construction begins on or before February 2, 2009.

(Ord. No. 2005-(O)-30 § 4; Ord. No. 2006-(O)-64 § 1)

36-18.5 Calculation of Stormwater Runoff and Groundwater Recharge.

a. Stormwater runoff shall be calculated in accordance with the following:

1. The design engineer shall calculate runoff using one (1) of the following methods;

(a) The USDA Natural Resources Conservation Service (NRCS) methodology, including the NRCS Runoff Equation and Dimensionless Unit Hydrograph, as described in the NRCS National Engineering Handbook Section 4 – Hydrology and Technical Release 55 – Urban Hydrology for Small Watersheds; or

(b) The Rational Methods for peak flow and the Modified Rational Method for hydrograph computations.

2. For the purpose of calculating runoff coefficients and groundwater recharge, there is a presumption that the preconstruction condition of a site or portion thereof is a wooded land use with good hydrologic condition. The term "runoff coefficient" applies to both the NRCS methodology at subsection 36-18.5a,1(a) and the Rational and Modified Rational Methods at subsection 36-18.5a,1(b). A runoff coefficient or a groundwater recharge land cover for an existing condition may be used on all or a portion of the site if the design engineer verifies that the hydrologic condition has existed on the site or portion of the site for at least five (5) years without interruption prior to the time of application. If more than one (1) land cover have existed on the site during the five (5) years immediately prior to the time of application, the land cover with the lowest runoff potential shall be used for the computations. In addition, there is the presumption that the site is in good hydrologic condition (if the land use type is pasture, lawn, or park), with good cover (if the land use type is woods), or with good hydrologic condition and conservation treatment (if the land use type is cultivation).

3. In computing preconstruction stormwater runoff, the design engineer shall account for all significant land features and structures, such as ponds, wetlands, depressions, hedgerows, or culverts that may reduce pre-construction stormwater runoff rates and volumes.

4. In computing stormwater runoff from all design storms, the design engineer shall consider the relative stormwater runoff rates and/or volumes of pervious and impervious surfaces separately to accurately compute the rates and volume of stormwater runoff from the site. To calculate runoff from unconnected impervious cover, urban impervious area modifications as described in the NRCS Technical Release 55 – Urban Hydrology for Small Watersheds and other methods may be employed.

5. If the invert of the outlet structure of a stormwater management measure is below the flood hazard design flood elevation as defined at N.J.A.C. 7:13, the design engineer shall take into account the effects of tailwater in the design of structural stormwater management measures.

b. Groundwater recharge may be calculated in accordance with the following:

1. The New Jersey Geological Survey Report GSP-32, A Method for Evaluating Ground-Water Recharge Areas in New Jersey, incorporated herein by reference as amended and supplemented. Information regarding the methodology is available from the New Jersey Stormwater Best Management Practices Manual: as <http://www.state.nj.us/dep/njgs/>; or at New Jersey Geological Survey, 29 Arctic Parkway, P.O. Box 427, Trenton, New Jersey 08625-0427; (609) 984-6587.
(Ord. No. 2005-(O)-30 § 5)

36-18.6 Standards for Structural Stormwater Management Measures.

a. Standards for structural stormwater management measures are as follows:

1. Structural stormwater management measures shall be designed to take into account the existing site conditions, including, for example, environmentally critical areas, wetlands; flood-prone areas; slopes depth the seasonal high water table; soil type, permeability and texture; drainage area and drainage patterns; and the presence of solution-prone carbonate rocks (limestone).

2. Structural stormwater management measures shall be designed to minimize maintenance, facilitate maintenance and repairs, and ensure proper functioning. Trash racks shall be installed at the intake to the outlet structure as appropriate, and shall have parallel bars with one (1) inch spacing between the bars to the elevation of the water quality design storm. For elevations higher than the water quality design storm, the parallel bars at the outlet structure shall be spaced no greater than one-third (1/3) the width of the diameter of the orifice or one-third (1/3) the width of the weir, with a minimum spacing between bars of one (1) inch and a maximum spacing between bars of six (6) inches. In addition, the design of trash racks must comply with the requirements of subsection 36-18.8b.

3. Structural stormwater management measures shall be designed, constructed, and installed to be strong, durable, and corrosion resistant. Measures that are consistent with the

relevant portions of the Residential Site Improvement Standards at N.J.A.C. 5:21-7.3, 7.4, and 7.5 shall be deemed to meet this requirement.

4. At the intake to the outlet from the stormwater management basin, the orifice size shall be a minimum of two and one-half (2 1/2) inches in diameter.

5. Stormwater management basins shall be designed to meet the minimum safety standards for stormwater management basins at subsection 36-18.8.

b. Stormwater management measure guidelines are available in the New Jersey Stormwater Best Management Practices Manual. Other stormwater management measures may be utilized provided the design engineer demonstrates that the proposed measure and its design will accomplish the required water quantity, groundwater recharge and water quality design and performance standards established by subsection 36-18.4 of this section.

c. Manufactured treatment devices may be used to meet the requirements of subsection 36-18.4 of this section, provided the pollutant removal rates are verified by the New Jersey Corporation for Advanced Technology and certified by the Department.
(Ord. No. 2005-(O)-30 § 6)

36-18.7 Sources for Technical Guidance.

a. Technical guidance for stormwater management measures can be found in the documents listed at 1 and 2 below, which are available from Maps and Publications, New Jersey Department of Environmental Protection, 428 East State Street, P.O. Box 420, Trenton, New Jersey, 08625; telephone (609) 777-1038.

1. Guidelines for stormwater management measures are contained in the New Jersey Stormwater Best Management Practices Manual, as amended. Information is provided on stormwater management measures such as: bioretention systems, constructed stormwater wetlands, dry wells, extended detention basins, infiltration structures, manufactured treatment devices, pervious paving, sand filters, vegetative filter strips, and wet ponds.

2. The New Jersey Department of Environmental Protection Stormwater Management Facilities Maintenance Manual, as amended.

b. Additional technical guidance for stormwater management measures can be obtained from the following:

1. The "Standards for Soil Erosion and Sediment Control in New Jersey" promulgated by the State Soil Conservation Committee and incorporated into N.J.A.C. 2:90. Copies of these standards may be obtained by contacting the State Soil Conservation Committee or any of the Soil Conservation Districts listed in N.J.A.C. 2:90-1.3(a)4. The location, address, and telephone number of each Soil Conservation District may be obtained from the State Soil Conservation Committee, P.O. Box 330, Trenton, New Jersey 08625; (609) 292-5540.

2. The Rutgers Cooperative Extension Services, 732-932-9306; and

3. The Soil Conservation Districts listed in N.J.A.C. 2:90-1.3(a) 4. The location, address, and telephone number of each Soil Conservation District may be obtained from the

State Soil Conservation Committee, P.O. Box 330, Trenton, New Jersey, 08625, (609) 292-5540.

(Ord. No. 2005-(O)-30 § 7)

36-18.8 Safety Standards for Stormwater Management Basins.

a. This subsection sets forth requirements to protect public safety through the proper design and operation of stormwater management basins. This subsection applies to any new stormwater management basin.

b. *Requirements for Trash Racks, Overflows Grates and Escape Provisions.*

1. A trash rack is a device designed to catch trash and debris and prevent the clogging of outlet structures. Trash racks shall be installed at the intake to the outlet from the stormwater management basin to ensure proper functioning of the basin outlets in accordance with the following:

(a) The trash rack shall have parallel bars, with no greater than six (6) inch spacing between the bars.

(b) The trash rack shall be designed so as not to adversely affect the hydraulic performance of the outlet pipe or structure.

(c) The average velocity of flow through a clean trash rack is not to exceed two and one-half (2.5) feet per second under the full range of stage and discharge. Velocity is to be computed on the basis of the net area of opening through the rack.

(d) The trash rack shall be constructed and installed to be rigid, durable, and corrosion resistant, and shall be designed to withstand a perpendicular live loading of three hundred (300) lbs./ft. sq.

2. An overflow grate is designed to prevent obstruction of the overflow structure. If an outlet structure has an overflow grate, such grate shall meet the following requirements:

(a) The overflow grate shall be secured to the outlet structure but removable for emergencies and maintenance.

(b) The overflow grate spacing shall be no less than two (2) inches across the smallest dimension.

(c) The overflow grate shall be constructed and installed to be rigid, durable, and corrosion resistant, and shall be designed to withstand a perpendicular live loading of three hundred (300) lbs./ft. sq.

3. For purposes of this paragraph 3, escape provisions means the permanent installation ladders, steps, rungs, or other features that provide easily accessible means of egress from stormwater management basins. Stormwater management basins shall include escape provisions as follows:

(a) If a stormwater management basin has an outlet structure, escape provisions shall be incorporated in or on the structure. With the prior approval of the reviewing

agency identified in subsection 36-18.8c a freestanding outlet structure may be exempted from this requirement.

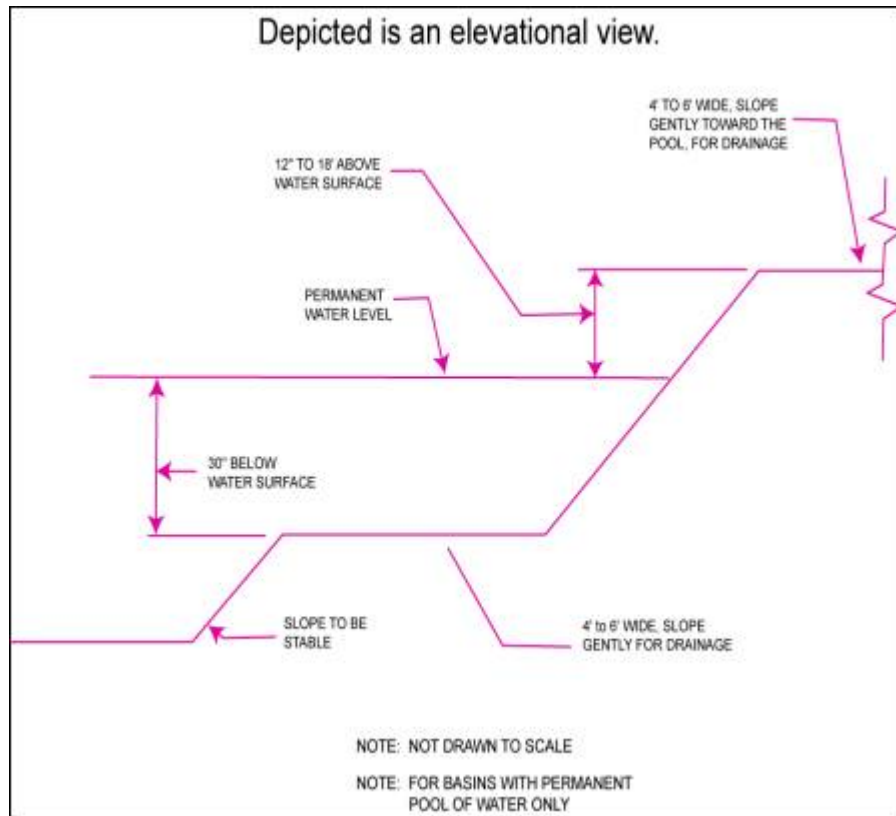
(b) Safety ledges shall be constructed on the slopes of all new stormwater management basins having a permanent pool of water deeper than two and one-half (2 1/2) feet. Such safety ledges shall be comprised of two (2) steps. Each step shall be four (4) to six (6) feet in width. One (1) step shall be located approximately two and one-half (2 1/2) feet below the permanent water surface, and the second step shall be located one (1) to one and one-half (1 1/2) feet above the permanent water surface.

(c) In new stormwater management basins, the maximum interior slope for an earthen dam, embankment, or berm shall not be steeper than 3 horizontal to 1 vertical.

c. *Variance or Exemption from Safety Standards.*

1. A variance or exemption from the safety standards for stormwater management basins may be granted only upon a written finding by the appropriate reviewing agency (municipality, County or Department) that the variance or exemption will not constitute a threat to public safety.

d. *Illustration of Safety Ledges in a New Stormwater Management Plan.*



(Ord. No. 2005-(O)-30 § 8; Ord. No. 2006-(O)-64 § 2)

36-18.9 Requirements for a Site Development Stormwater Plan.

a. *Submission of Site Development Stormwater Plan.*

1. Whenever an applicant seeks municipal approval of a development subject to this section, the applicant shall submit all of the required components of the Checklist for the Site Development Stormwater Plan at subsection 36-18.9c below as part of the submission of the applicant's application for subdivision or site plan approval.

2. The applicant shall demonstrate that the project meets the standards set forth in this section.

3. The applicant shall submit eighteen (18) copies of the materials listed in the checklist for site development stormwater plans in accordance with subsection 36-18.9c of this section.

b. *Site Development Stormwater Plan Approval.* The applicant's Site Development project shall be reviewed as a part of the subdivision or site plan review process by the municipal board or official from which municipal approval is sought. That municipal board or official shall consult the engineer retained by the Planning and/or Zoning Board (as appropriate) to determine if all of the checklist requirements have been satisfied and to determine if the project meets the standards set forth in this section.

c. *Checklist Requirements.* The following information shall be required:

1. **Topographic Base Map.** The reviewing engineer may require upstream tributary drainage system information as necessary. It is recommended that the topographic base map of the site be submitted which extends a minimum of two hundred (200) feet beyond the limits of the proposed development, at a scale of 1"=200' or greater, showing 2-foot contour intervals. The map as appropriate may indicate the following: existing surface water drainage, shorelines, steep slopes, soils, erodible soils, perennial or intermittent streams that drain into or upstream of the Category One waters, wetlands and flood plains along with their appropriate buffer strips, marshlands and other wetlands, pervious or vegetative surfaces, existing manmade structures, roads, bearing and distances of property lines, and significant natural and manmade features not otherwise shown.

2. **Environmental Site Analysis.** A written and graphic description of the natural and man-made features of the site and its environs. This description should include a discussion of soil conditions, slopes, wetlands, waterways and vegetation on the site. Particular attention should be given to unique, unusual, or environmentally sensitive features and to those that provide particular opportunities or constraints for development.

3. **Project Description and Site Plan(s).** A map (or maps) at the scale of the topographical base map indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural facilities for stormwater management and sediment control, and other permanent structures. The map(s) shall also clearly show areas where alterations occur in the natural terrain and cover, including lawns and other landscaping, and seasonal high ground water elevations. A written description of the site plan and justification of proposed changes in natural conditions may also be provided.

4. **Land Use Planning and Source Control Plan.** This plan shall provide a demonstration of how the goals and standards of subsections 36-18.3 through 36-18.6 are being met. The focus of this plan shall be to describe how the site is being developed to

meet the objective of controlling groundwater recharge, stormwater quality and stormwater quantity problems at the source by land management and source controls whenever possible.

5. Stormwater Management Facilities Map. The following information, illustrated on a map of the same scale as the topographic base map, shall be included:

(a) Total area to be paved or built upon, proposed surface contours, land area to be occupied by the stormwater management facilities and the type of vegetation thereon, and details of the proposed plan to control and dispose of stormwater.

(b) Details of all stormwater management facility designs, during and after construction, including discharge provisions, discharge capacity for each outlet at different levels of detention and emergency spillway provisions with maximum discharge capacity of each spillway.

6. Calculations.

(a) Comprehensive hydrologic and hydraulic design calculations for the predevelopment and post-development conditions for the design storms specified in subsection 36-18.4 of this section.

(b) When the proposed stormwater management control measures (e.g. infiltration basins) depends on the hydrologic properties of soils, then a soils report shall be submitted. The soils report shall be based on on-site borings logs or soil pits profiles. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soils present at the location of the control measure.

7. Maintenance and Repair Plan. The design and planning of the stormwater management facility shall meet the maintenance requirements of subsection 36-18.10.

8. Waiver from Submission Requirements. The municipal official or board reviewing an application under this ordinance may, in consultation with the municipal engineer, waive submission of any of the requirements in subsections 36-18.9c,1 through c,6 when it can be demonstrated that the information requested is impossible to obtain or it would create a hardship on the applicant to obtain and its absence will not materially affect the review process.

(Ord. No. 2005-(O)-30 § 9)

36-18.10 Maintenance and Repair.

a. *Applicability.*

1. Projects subject to review as in subsection 36-18.1c. of this section shall comply with the requirements of subsection 36-18.10b. and c.

b. *General Maintenance.*

1. The design engineer shall prepare a maintenance plan for the stormwater management measures incorporated into the design of a major development.

2. The maintenance plan shall contain specific preventative maintenance tasks and schedules; cost estimates, including estimated cost of sediment, debris, or trash removal; and the name, address, and telephone number of the person or persons responsible for preventative and corrective maintenance (including replacement). Maintenance guidelines for stormwater management measures are available in the New Jersey Stormwater Best Management Practices Manual. If the maintenance plan identifies a person other than the developer (for example, a public agency or homeowners' association) as having the responsibility for maintenance, the plan shall include documentation of such person's agreement to assume this responsibility, or of the developer's obligation to dedicate a stormwater management facility to such person under an applicable ordinance or regulation.

3. Responsibility for maintenance shall not be assigned or transferred to the owner or tenant of an individual property in a residential development or project, unless such owner or tenant owns or leases the entire residential development or project.

4. If the person responsible for maintenance identified under subsection 36-18.10b,2 above is not a public agency, the maintenance plan and any future revisions based on subsection 36-18.10b,7 below shall be recorded upon the deed of record for each property on which the maintenance described in the maintenance plan must be undertaken.

5. Preventative and corrective maintenance shall be performed to maintain the function of the stormwater management measure, including repairs or replacement to the structure; removal of sediment, debris, or trash; restoration of eroded areas; snow and ice removal; fence repair or replacement; restoration of vegetation; and repair or replacement of nonvegetated linings.

6. The person responsible for maintenance identified under subsection 36-18.10b,2 above shall maintain a detailed log of all preventative and corrective maintenance for the structural stormwater management measures incorporated into the design of the development, including a record of all inspections and copies of all maintenance-related work orders.

7. The person responsible for maintenance identified under subsection 36-18.10b,2 above shall evaluate the effectiveness of the maintenance plan at least once per year and adjust the plan and the deed as needed.

8. The person responsible for maintenance identified under subsection 36-18.10b,2 above shall retain and make available, upon request by any public entity with administrative, health, environmental, or safety authority over the site, the maintenance plan and the documentation required by subsection 36-18.10b,6 and 7 above.

9. The requirements of subsection 36-10.10b,3 and b,4 do not apply to stormwater management facilities that are dedicated to and accepted by the municipality or another governmental agency.

10. In the event that the stormwater management facility becomes a danger to public safety or public health, or if it is need of maintenance or repair, the municipality shall so notify the responsible person in writing. Upon receipt of that notice, the responsible person shall have fourteen (14) days to effect maintenance and repair of the facility in a manner that is approved by the Municipal Engineer or his designee. The municipality, in its discretion,

may extend the time allowed for effecting maintenance and repair for good cause. If the responsible person fails or refuses to perform such maintenance and repair, the municipality or County may immediately proceed to do so and shall bill the cost thereof to the responsible person.

c. Nothing in this section shall preclude the municipality in which the major development is located from requiring the posting of a performance or maintenance guarantee in accordance with N.J.S.A. 40:55D-53.
(Ord. No. 2005-(O)-30 § 10)

36-18.11 Penalties.

Any person who erects, constructs, alters, repairs, converts, maintains, or uses any building, structure or land in violation of this section shall be subject to the penalties as set forth in subsection 36-16.2d of this chapter, unless otherwise provided by law. (Ord. No. 2005-(O)-30 § 11)

36-18.12 Effective Date.

This section shall take effect immediately upon the approval by the County review agency, or sixty (60) days from the receipt of the section by the county review agency if the County review agency should fail to act. (Ord. No. 2005-(O)-30 § 12)

36-18.13 Severability.

If the provisions of any subsection, paragraph, subdivision, or clause of this section shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any subsection, paragraph, subdivision, or clause of this section. (Ord. No. 2005-(O)-30 § 13)

CHAPTER XXXVIII ZONING*

38-1 TITLE AND PURPOSE.

38-1.1 Title.

An ordinance limiting and restricting to specific districts and regulating therein buildings and structures according to their construction and the nature and extent of their use and the nature and extent of the uses of land; regulating and restricting the height, number of stories and sizes of buildings and other structures; the size of yards, courts, and other open spaces, the density of population and the location, use and extent of buildings and structures for trade, industry, residence, or other purposes; providing for the administration and enforcement of the provisions herein; all for the purpose of promoting the health, safety, morals and general welfare of the Town of Kearny and its people. (Ord. No. 10-14-87)

38-1.2 Short Title.

This chapter shall be known and cited as the "Zoning Ordinance of the Town of Kearny." (Ord. No. 10-14-87 § 138-1.200)

38-1.3 General Intent.

The intent of this chapter is to establish a precise and detailed plan for the use of land and buildings in the Town of Kearny, enacted in order to promote and to protect the public health, safety, morals, comfort, convenience and the general welfare of the people.

The Zoning Ordinance for the Town of Kearny shall be viewed as a permissive ordinance. In no instance after the adoption of this chapter shall any use be permitted in the Town of Kearny which is not listed as a permitted or accessory use as specified in the Use Schedule of Regulations in this chapter.

The intent of the subchapter pertaining to Wireless Telecommunications Equipment is to enable the location within the Town of those antennas which are necessary to provide adequate wireless telecommunications services while, at the same time, limiting the number of supporting towers to the fewest possible and minimizing the impact of the antennas, accessory equipment, and supporting structures on residences, streetscapes, and vistas throughout the municipality. (Ord. No. 10-14-87 § 138-1.300; Ord. No. 2002-O-78; Ord. No. 2003-(O)-23)

38-1.4 Purpose.

Such regulations are deemed necessary to achieve the following purposes:

- a. *Promote Orderly Development.* To protect the character and maintain the stability of all areas within the Town, and to promote the orderly and beneficial development of such areas.
- b. *Regulate Intensity of Use.* To regulate the intensity of use of zoning lots, and to determine the area of open spaces surrounding buildings necessary to provide adequate light and air, privacy and convenience of access to property and to protect the public health, safety and welfare.
- c. *Regulate Location of Buildings and Establish Standards of Development.* To establish building lines and the location of buildings designed for residential, commercial, industrial, office, or other uses within such lines and to fix reasonable standards to which buildings or structures shall conform.
- d. *Prohibit Incompatible Uses.* To prohibit uses, buildings or structures which are incompatible with the character of development or the permitted uses within specified zoning districts.
- e. *Regulate Alterations of Existing Buildings.* To prevent such additions to, and alterations or remodeling of, existing buildings or structures as would not comply with the restrictions and limitations imposed hereunder.

f. *Limit Congestion in Streets.* To limit congestion in the public streets and so protect the public health, safety, conveniences, and the general welfare by providing for off-street parking of motor vehicles and for the loading and unloading of commercial vehicles.

g. *Protect Against Hazards.* To provide protection against fire, explosion, noxious fumes, and other hazards in the interest of the public health, safety, comfort, and the general welfare.

h. *Conserve Taxable Value of Land.* To conserve the taxable value of land and buildings throughout the Town.

i. *Consistent with Municipal Land Use Law.* To be consistent with the purposes of the Municipal Land Use Law C 40:55D-1 et seq.

j. *Regulate the Placement of Wireless Telecommunications Antennas and Related Equipment.*

1. To encourage the location of antennas upon, or within, existing structures, including existing buildings, existing wireless telecommunications towers, existing water towers, and existing telephone and electric towers, especially those existing structures situated in nonresidential districts;

2. To encourage the configuration of telecommunications facilities in a manner that minimizes and mitigates any adverse impact upon affected properties, streetscapes, and vistas through careful design, siting, screening, landscaping, and innovative camouflaging techniques;

3. To encourage the co-location of as many antennas as possible, of as many wireless telecommunications carriers as possible, on existing towers and other structures in nonresidential districts;

4. To discourage the construction of new towers which do not have the likelihood of being used by a number of wireless telecommunications carriers;

5. To minimize the total number of wireless telecommunications towers within the Town;

6. To discourage adverse impacts on community aesthetics;

7. To formulate and maintain, for land use planning purposes, a complete inventory of all wireless telecommunications antenna towers, and related facilities within the Town, and others in the vicinity of the Town, which are capable of providing service within the municipality;

8. To enhance the ability of the carriers of wireless telecommunications services who adhere to the specific requirements and intent of the ordinance provisions to provide such service quickly, effectively, and efficiently; and

9. To comply with the mandate of the Federal Telecommunications Act of 1996, 47 U.S.C. Section 332(c)(7), which preserves local government authority to enforce zoning requirements which protect public safety, public and private property, and community aesthetics.

(Ord. No. 10-14-87 § 138-1.400; Ord. No. 2002-O-78; Ord. No. 2003-(O)-23)

38-2 DEFINITIONS.

38-2.1 General.

Unless the context otherwise indicates, the following definitions shall be used in the interpretation and construction of the chapter. Words used in the present tense include the future; the singular number shall include the plural, and the plural the singular; the word "building" shall include the word "structure;" the word "person" includes a corporation as well as an individual; the word "lot" includes the word "plot," the word "occupied" includes the words "designed or intended to be occupied," the word "used" shall include the words "arranged, designed, constructed, altered, converted, rented, leased, or intended to be used;" the word "shall" is mandatory and not optional, and the word "may" is permissive. (Ord. No. 10-14-87 § 138-2.100)

38-2.2 Definitions.

As used in this chapter:

Accessory use or structure shall mean a use or structure subordinate to the principal use of a building or structure on the same zone lot and serving a purpose customarily incidental to the principal use of the principal building.

Addition shall mean an extension or increase in floor area or height of a building or structure.

Alleyway shall mean a private driveway in Planned Residential Developments for providing direct vehicular access to residential units, not required for general circulation and not exceeding six hundred (600) feet in length with dual access, nor three hundred (300) feet in length with single access to a public or private roadway.

Alteration shall mean a change or rearrangement in the structural parts or in means of egress; or an enlargement, whether by extending on a side or by increasing in height; or the moving from one location or position to another.

Animal hospital shall mean a place where animals or pets are given medical or surgical treatment. Use as a kennel shall be limited to hospital use and treatment.

Animal kennel shall mean any building, structure or premises in which animals are kept, boarded or trained for commercial gain.

Antenna shall mean any device specifically designed for the reception or transmission or both, of radio frequency signals.

Apartment shall mean a portion of a building consisting of a group of rooms used as a dwelling for a family and set apart as a separate unit from other units or portions of the building.

Applicant shall mean a developer submitting an application for development.

Application for development shall mean the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned

development, conditional use, zoning variance or direction of issuance of a permit pursuant to law.

Approving authority shall mean the Planning Board of the Town of Kearny unless a different agency is designated by ordinance.

Automobile service stations or gasoline station shall mean a public building or place of business where gasoline, fuel, oil and grease and/or batteries, tires and automobile accessories are supplied and dispensed directly to the motor vehicle trade and where minor repair service is rendered.

Basement shall mean a story partly above grade level having more than one-half (1/2) of its floor-to-ceiling height above the average level of the adjoining ground. A basement shall be counted as a story if used for business or dwelling purposes.

Bathroom facilities shall mean a room equipped with a bathtub or shower, sink and a toilet.

Bay window shall mean a window projecting beyond the wall line of the building and extending down to the foundations.

Bedroom shall mean a room in a dwelling in which one (1) or more persons normally sleep.

Billboard shall mean a sign which directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located.

Board shall mean the Planning Board of the Town of Kearny.

Boarding house or rooming house shall mean a residence structure other than a motel or hotel where lodging and/or meals are provided for compensation.

Building shall mean a combination of materials to form a construction adopted to permanent, temporary or continuous occupancy and having a roof.

Building coverage shall mean that portion of a lot which is occupied by all principal and accessory buildings, but not including covered walkways, steps, patios, decks, uncovered porches, parking lots, or outdoor residential swimming pools and swimming pool decks, or similar improvements thereto. In the event that any other floor of a building exceeds the dimensions of the ground floor, the area of the larger floor shall be used in the computation of building coverage.

Building, principal shall mean a structure in which is conducted the principal use of the site on which it is situated.

Carport shall mean a roofed structure providing space for the parking of motor vehicles and enclosed on not more than two (2) sides.

Cellar shall mean a story partly above grade level having more than one-half (1/2) of its floor-to-ceiling height below the average level of the adjoining ground. No cellar or portion thereof shall be used as a dwelling unit.

Certificate of Occupancy shall mean the certificate issued by the construction official which permits the use of a building in accordance with the approved plans and specifications and which certifies compliance with the provisions of law for the use and occupancy of the building or land, the special stipulations or conditions of the building permit and authorization, where appropriate, by the Approving Authority.

Change of use shall mean any use which substantially differs from the previous use of a building or land.

Chassis shall mean a special trailer or undercarriage on which containers are moved over the road by truck.

Child day care center shall mean a facility providing a program less than twenty-four (24) hours per day per child for the care of more than five (5) children, two and one-half (2 1/2) years or older.

Clubs, lodges, social and community center building shall mean a building or structure used to house a group of people organized for a common purpose to pursue common goals, interests, or activities and usually characterized by certain membership qualifications, payment of fees or dues, and regular meetings.

Co-location shall mean the mounting of personal wireless service facilities used by two (2) or more competing providers on the same antenna support structure, monopole or antenna tower.

Commercial or industrial driveway shall mean a driveway providing access for commercial or industrial use of property.

Common driveway shall mean two (2) or more driveways on adjoining properties, which share a single access point onto a Town street or road.

Common open space shall mean an open space area within or related to a site designated as a development, and designed and intended for the use or enjoyment of residents and owners of the development. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the use and enjoyment of residents and owners of the development.

Container shall mean a recognized vehicle for transporting cargo, comprised of a box constructed with varying dimensions to withstand shipment conditions in transportation. Containers may be transferred between different transportation systems. When mounted on a chassis, it comprises a trailer. Standard measuring unit for a container is a TEU (Twenty-foot Equivalent Unit). One standard 40-foot container equals two (2) TEU's.

Conventional housing shall mean any residential development other than limited income house (LIH), as defined in this chapter.

Court shall mean a court is an unoccupied space which is bounded by three (3) or more attached building walls other than a front, side, or rear yard on the same lot with the principal building.

- a. *Court, Depth of an Outer.* The horizontal dimensions between its open end and the end opposite.

- b. *Court, Height of.* The vertical distance from the lowest level it is required to serve to the top of the highest wall which bounds it within the same lot.
- c. *Court, Inner.* A court entirely enclosed by walls or opening on a side lot line.
- d. *Court, Outer.* A court opening for its full width on a street, a front yard, a rear yard, or a side yard.
- e. *Court, Width of an Inner.* Its lesser horizontal dimension.
- f. *Court, Width of an Outer.* Its horizontal dimension parallel with its principal open end.

Cross docking shall mean loading docks situated along parallel walls.

Curb level shall mean the mean level of the curb at that street frontage of the building where the average curb level is highest. Where the lot level is higher than the curb level, the average level of the former along the wall in question may be taken as the base for measuring the height of a wall adjacent to a yard or court.

Day nursery shall mean a facility providing a program less than twenty-four (24) hours per day per child for the care of more than five (5) children not more than two and one-half (2 1/2) years old.

Density, gross shall mean a number expressing dwelling units per gross acre of land within a parcel of property.

Developer shall mean the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

Development shall mean the division of a parcel of land into two (2) or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required.

Development group shall mean the development of land and more than one (1) principal building or structure on a zone lot designated to be maintained and operated by one (1) or more persons, planned as an entity and therefore susceptible to development and regulation and a complex land use unit, rather than an aggregate of individual buildings or structures located on separate unrelated lots or parcels.

District shall mean a district or a zone shall be any portion of the territory of the Town of Kearny within which certain uniform regulations and requirements or various combinations thereof apply under the provisions of this chapter.

Dormitory shall mean a space in a building where group sleeping accommodations are provided for persons not members of the same family group, in one (1) room, or in a series of closely associated rooms.

Driveway shall mean a private driveway, alleyway, road, or other avenue of vehicular travel that runs through any part of a private parcel of land that connects to a public roadway.

Driveway improvement shall mean the upgrading or reconstruction of pre-existing driveway such as adding or replacing permanent surface, i.e., concrete or asphalt.

Duplex townhouse shall mean a dwelling unit designed for and occupied by no more than one (1) family or household. Each such dwelling unit is comprised of more than one (1) level and has direct access to the outdoors. Such unit may be situated partially or wholly above or below another similar unit; provided, however, that no more than two (2) such units may be included in a building between two (2) party walls which extend from the foundations to and through the roof and which may be attached to no more than two (2) buildings accommodating townhouses or duplex townhouses or apartments. Each duplex townhouse shall be provided with individual cooking, sleeping and sanitary facilities for the use of one (1) family or household. For the purpose of this chapter a duplex townhouse may be in condominium, cooperative or leasehold ownership or any combination thereof.

Dwelling, one family shall mean a detached building on a single lot containing one (1) dwelling unit. A one (1) family dwelling unit is also referred to as a "single family dwelling."

Dwelling, two family shall mean a structure on a single lot containing two (2) dwelling units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling units or any structure containing two (2) dwelling units, regardless of the building's configuration.

Dwelling, multiple family shall mean a structure containing more than two (2) dwelling units with direct access from the outside for each dwelling unit or through a common hall.

Dwelling unit shall mean one (1) or more rooms (a) occupied as separate living quarters or designed so that it or they may be occupied as a separate living quarters, (b) isolated and secure from access to all other portions of the building in which it or they are located, and (c) which include all of the following:

- a. Bathroom facilities not shared by occupants of any other dwelling unit,
- b. Kitchen facilities, and
- c. A separate means of egress not requiring access or passage through a private portion of another dwelling unit.

Essential service shall mean the erection, construction, alteration, or maintenance by public utilities or municipal or other governmental agencies of underground, surface or overhead gas, electrical, steam or water transmission systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, light stations, telephone lines and accessories herewith, reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health, safety, or general welfare.

FAA application shall mean any application, or other request, to the Federal Aviation Administration for a license, certificate, waiver, special temporary authorization, or any other instrument of authorization issued by the Federal Aviation Administration regarding an applicant's telecommunications structures, antennas, and equipment.

FAA filings shall mean any application with all attachments, exhibits, appendices, memoranda, amendments, supplements, and comments; all correspondence addressed to the Federal Aviation Administration; individual comments or objections of other parties, including but not limited to, informal objections, petitions to deny, proposed findings of fact, conclusions of law, and briefs on appeal; the initial decision of Federal Aviation Administration; notices of appeal; all briefs and other documents on appeal; and all other related matters.

Family shall mean any number of persons related by blood, marriage or adoption living together as a single housekeeping unit and using certain rooms and housekeeping facilities in common. A family shall also include foster children placed with a family in such dwelling by the Division of Youth and Family Services in the Department of Institutions and Agencies or a duly incorporated child care agency and children placed pursuant to law in single-family dwellings known as group homes.

FCC application shall mean any application, or other request, to the Federal Communications Commission for a license, certificate, waiver, special temporary authorization, or any other instrument of authorization issued by the Federal Communications Commission under the Telecommunications Act of 1934, or the Telecommunications Act of 1996.

FCC filing shall mean any application with all attachments, exhibits, appendices, memoranda, amendments, supplements, and comments; all correspondence addressed to the Federal Communications Commission; individual comments or objections of other parties, including but not limited to informal objections, petitions to deny, proposed findings of fact, conclusions of law, and briefs on appeal; the initial decision of the Federal Communications Commission; notices of appeal; all briefs and other documents on appeal; and all other related matters.

Floor area shall mean the sum of the gross horizontal areas of the several floors of a building measured from the exterior walls in a building. Floor area shall not include areas devoted to mechanical equipment serving the building, stairways and elevators, areas devoted exclusively to off-street parking and loading space for motor vehicles, and to any space where the floor to ceiling height shall be less than seven (7) feet.

Floor area ratio (F.A.R.) shall mean the gross floor area of all buildings and structures, including parking decks, on the lot divided by the lot area.

Freight forwarding shall mean an establishment primarily engaged in the transshipment of goods from shippers to receivers for a charge, covering the entire transportation route and, in turn, making use of services of other transportation establishments as instrumentalities in effecting delivery. Freight forwarding facilities may include areas for the temporary storage, transfer, repacking, consolidation or distribution of such goods and accessory parking and servicing of trucks and trailers.

Garage, private commercial shall mean a structure which is accessory to a nonresidential establishment, building, or use and is primarily for the parking and storage of vehicles operated by the customers, visitors, and employees of such building.

Garage, private residential shall mean a structure which is accessory to a residential building and which is used primarily for the parking and storage of vehicles owned and operated by the residents thereof, and which is not a separate commercial enterprise available to the public.

Garage, public shall mean a building or structure for the storage or parking of vehicles and in which provisions may be made for repairing or servicing of such vehicles as a use incidental to the vehicle storage use.

Garden apartment shall mean one (1) or more multiple-family buildings not exceeding three (3) stories or thirty-five (35) feet in height, containing off-street parking, outdoor recreation facilities, landscaped areas and other appurtenant facilities.

Height of an antenna:

- a. *Height of an antenna*, if required to be measured from ground level shall mean the measurement which is made from the mean grade of the surrounding terrain to a radius of fifty (50) feet and up to and including the highest point of the antenna or antenna support, whichever is higher. Height from ground level shall be measured from mean surface grade ground level regardless of whether or not the antenna support is mounted on an existing structure or extends to ground level.
- b. *Height of an antenna*, if required to be measured from the roof line, shall mean the measurement which is made from the exterior surface of the roof covering the top floor of the building, but shall not include any penthouse, structure, or enclosure used solely to house heating, ventilating, air-conditioning, elevator, or other utility facilities.

Height of a building shall mean the vertical distance measured, in the case of flat roofs, from the curb level to the level of the highest point of the room beams adjacent to the street wall and, in the case of pitched roofs, from the curb level to the mean the highest point of the roof.

Height of a court shall mean the vertical distance from the lowest level it is required to serve to the top of the highest wall which bounds it within the same lot.

Historic site shall mean any building, structure, area or property that is significant in the history, architecture, archeology or culture of this State, its communities or the Nation and has been so designated.

Home occupation shall mean any activity carried out for gain by a resident conducted as an accessory use in the residence dwelling unit.

Hotel shall mean any building containing six (6) or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests.

Household shall mean a family or a group of not more than three (3) persons who are not so related living together as a single housekeeping unit.

Improved lot coverage shall mean the percentage of lot area which is improved with principal and accessory buildings and structures, exclusive of decks, uncovered porches, outdoor residential swimming pools and pool decks, but including driveways, parking lots, pedestrian walkways, signs, and other manmade improvements on the ground surface.

Indigenous limited income household shall mean a low income or moderate income household which includes at least one (1) resident of the Town of Kearny or at least one (1) salaried employee of the Town of Kearny, or at least one (1) salaried employee of the Board of Education of the Town of Kearny.

Intermodal facility shall mean a facility principally used for the transfer of cargo from one mode of transportation to another. The cargo is primarily containerized and is not broken down or consolidated on site. Intermodal facilities may include trailer parking areas and interior areas for the repair and servicing of trailers, containers, and trucks utilized on site.

Joint driveway. See definition of "Common driveway" above.

Junkyard shall mean the use of any area, lot, parcel, building or structure for the storage, sale, processing, or abandonment of junk including scrap metal and other materials, or for the dismantling, demolition or abandonment of any inoperable mechanical equipment, machinery, or vehicles or parts thereof. A "junkyard" shall not include the storage of materials for processing of discarded or salvaged materials as part of a permitted industrial or recycling operation on the same premises.

Kitchen facilities shall mean an area with a stove or an oven where food is cooked or prepared.

Limited income housing (LIH) shall mean dwelling accommodations made available to indigenous or non-indigenous low and moderate income households at costs not exceeding the limits provided in subsection 38-6.10d.

Lot shall mean a designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit. (Also known as a zone lot.)

- a. *Lot, Corner.* A parcel of land at the junction of and abutting on two (2) or more intersecting streets. The owner of a "corner lot" in any district may, at the time application is made for a building permit designate either street frontage as the front of the lot. The principal structure must face on the frontage selected.
- b. *Lot, Interior.* A parcel of land other than a corner lot.
- c. *Lot, Through.* A parcel of land which extends through from one (1) street to another.

Lot area shall mean the computed area contained within the lot lines.

Lot depth shall mean a mean horizontal distance between the front lot line and the rear lot line, measured perpendicular or radial to the front lot line to the furthest distance thereof.

Lot frontage shall mean the length of the front lot line.

Lot lines shall mean a line of record bounding the lot.

- a. *Lot Line, Front.* The lot line separating the lot from the street right-of-way. Also referred to as a "street line."
- b. *Lot Line, Rear.* The lot line opposite and most distant from the front lot line.
- c. *Lot Line, Side.* Any lot line other than a front or rear lot line. A side lot line separating a lot from a street is called a side street lot line.

Lot width shall mean the distance between the side lines measured parallel to the front lot line at the required front yard setback line.

Low income household shall mean a household in which the total income is not more than that specified in subsection 38-6.10d.

Mall shall mean a mall is a roofed over common pedestrian area serving more than one (1) tenant within a covered building.

Marquee sign shall mean a sign attached to or hung from a marquee canopy or other covered structure projecting from and supported by the building and extending beyond the building wall, building line or street lot line.

Mezzanine shall mean an intermediate level between the floor and ceiling of any story, and covering not more than thirty-three (33%) percent of the floor area of the room in which it is located. An intermediate level exceeding thirty-three (33%) percent of the floor area of the room in which is it located is considered another story.

Moderate income household shall mean a household in which the total income is not less nor more than that specified in subsection 38-6.10d.

Motor freight facility shall mean truck terminal.

Motel shall mean a hotel as defined in this chapter.

Multi-family apartment house shall mean a building or portion thereof containing more than two (2) dwelling units and not classified as a one (1) or two (2) family dwelling, or a townhouse. (See definition for "Dwelling, multiple-family.")

Nonconforming lot shall mean a lot the area, dimension or location of which was lawful prior to the adoption, revision or amendment of this chapter, but fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.

Nonconforming structure shall mean a structure the size, dimension or location of which was lawful prior to the adoption, revision or amendment of this Zoning Ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

Nonconforming use shall mean a use or activity which was lawful prior to the adoption, revision or amendment of this Zoning Ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.

Nonindigenous limited income household shall mean a low income household or a moderate income household other than an indigenous limited income household as defined in this chapter.

Occupancy shall mean the purpose for which a structure or part thereof or premises is used or intended to be used.

Off-site shall mean located outside the lot lines of the lot in question but within the property (of which the lot is part) which is the subject of a development application or contiguous portion of a street right-of-way.

Off-tract shall mean not located on the property which is the subject of a development application nor on a contiguous portion of a street right-of-way.

On-site shall mean located on the lot in question.

On-tract shall mean located on the property which is the subject of a development application or on a contiguous portion of a street or right-of-way.

Open space shall mean any parcel or area of land or water essentially unimproved and set aside, dedicated or reserved for public or private use or enjoyment or for the use and enjoyment of the owners and occupants of land adjoining or neighboring such open space; provided that such areas may be improved with only those buildings, structures, streets and off-street parking and other improvements that are designed to be incidental to the natural openness of the land.

Oriel window shall mean a window projected beyond and suspended from the wall of a building or cantilevered therefrom.

Parking area, private shall mean any open area used for the temporary storage of automobiles and other vehicles for the use solely by the occupants thereof to which such use is accessory.

Parking area, public shall mean any open area other than a street or other public way used for the temporary storage of automobiles and other vehicles and available to the public whether for a fee, or without compensation, or as an accommodation for clients, customers, or employees.

Party wall shall mean a common shared wall on an interior lot line between two (2) separate structures, buildings, or dwelling units.

Penthouse shall mean an enclosed structure above the roof of a building, other than a roof structure or bulkhead, occupying not more than thirty-three (33%) percent of the roof area.

Permit shall mean an official document or certificate issued by the approving authority having jurisdiction, authorizing performance of a specified activity not otherwise forbidden by law.

Person shall mean any individual, association, partnership, corporation or cooperative group.

Personal wireless service shall mean mobile services, unlicensed wireless services and common carrier wireless exchange access services, including cellular radiotelephone, specialized mobile radio system and personal communications services.

Plan shall mean the provisions for development of a planned development, including a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, public or private streets, ways and parking facilities, open space and public facilities. The phrase "provisions of the plan" when used in this chapter shall mean the written and graphic materials referred to in this definition.

Planned commercial development shall mean an area of a minimum contiguous size as specified by ordinance to be developed according to a plan as a single entity containing one (1) or more structures with appurtenant common areas to accommodate commercial or office uses or both and other uses incidental to the predominant use as may be permitted by ordinance.

Planned development shall mean planned unit development, planned unit residential development, residential cluster, planned commercial development or planned industrial development.

Planned industrial development shall mean an area of a minimum contiguous size as specified by ordinance to be developed according to a plan as a single entity containing one (1) or more structures with appurtenant common areas to accommodate industrial uses and other uses incidental to the predominant use as may be permitted by ordinance.

Planning Board shall mean the Planning Board of the Town of Kearny.

Prevailing setback shall mean the average distance from the front lot line to the front building wall of a structure on all lots within two hundred (200) feet on the same side of the block.

Public areas shall mean public areas including a. public parks, playgrounds, trails, paths and other recreational areas; b. other public open spaces; c. scenic and historic sites; and d. sites for schools and other public buildings and structures.

Public building shall mean any building which is primarily used and/or primarily occupied by the United States, the State of New Jersey, the Town of Kearny, or any subdivision or agency thereof, which building is used primarily for police, fire, public health, education, recreation, or any other governmental purpose.

Public open space shall mean an open space area conveyed or otherwise dedicated to a municipality, municipal agency, board of education, State or County agency, or other public body for recreational or conservation uses.

Redevelopment area shall mean an area determined to be in need of redevelopment pursuant to the "Local Redevelopment and Housing Law," N.J.S.A. 40A:12A-1, et seq.

Relocate driveway shall mean a change in access point, general design, length or drainage of an existing driveway.

Repair shall mean the reconstruction or renewal of any part of an existing building for the purpose of its maintenance.

Residential cluster shall mean an area to be developed as a single entity according to a plan containing residential housing units which have a common or public open space area as an appurtenance.

Residential driveway shall mean a driveway providing access used for a single, two-family or multi-family purposes only.

Restaurant shall mean a building or structure designed, used or intended for use in which either food or beverage or both are sold and consumed primarily within the confines of an enclosed structure on the site. A restaurant shall not include refreshment stands commonly called snack or dairy bars where consumption takes place outside of the structure or in automobiles parked upon the premises, whether brought to the automobiles by the customer or by employees of the establishment. A restaurant shall also include pick-up delivery services wherein food is prepared on the premises for off-premises consumption.

Restaurant, fast food shall mean an establishment whose principal business is the sale of pre-packaged or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building or off premises.

Satellite dish antenna shall mean a device or instrument used for the reception of television or other electronic communications signal broadcast or relayed from an earth satellite. It may be a solid, open mesh, or bar configured structure in the shape of a shallow disk or parabola.

Sight triangle shall mean a triangle-shaped easement established at the intersection of two (2) streets or a driveway and a street in which nothing shall be erected, placed, planted or allowed to grow in such a manner as to obstruct vision between the height of two (2) feet and six (6) inches above the centerline grade of the street or driveway. The triangle shall be determined along such street lot lines or edges of driveway twenty-five (25) feet distant from their property line.

Sign shall mean any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public.

Sign area shall mean the entire face of a sign including the advertising surface and any framing, trim, or molding, but not including the supporting structure. The sign area of mounted lettering or graphics shall be the rectangle of smallest dimensions enclosing such lettering or graphics.

Sign, ground shall mean any sign placed upon or supported by the ground independent of any other structure and advertising only the businesses or services located on the same lot.

Sign, projecting shall mean a sign mounted at right angles to the face of the building.

Sign, roof shall mean a sign mounted on the roof of a building.

Sign, wall shall mean a sign fastened parallel to the wall of a building which does not project more than eight (8) inches beyond the surface of the wall.

Site plan shall mean a representation of the proposed development, redevelopment, expansion or improvement of one (1) or more parcels of land and/or buildings in accordance with the rules and procedures of the Kearny Town Subdivision and Site Plan Ordinance.

Standards of performance shall mean standards a. adopted by ordinance regulating noise levels, glare, earthborne or sonic vibrations, heat, electronic or atomic radiation, noxious odors, toxic matters, explosive and inflammable matters, smoke and airborne particles, waste discharge, screening of unsightly objects or conditions and such other similar matters as may be reasonably required by the Town of Kearny, or b. required by applicable Federal, State or Interstate law.

Story shall mean that part of any building comprised between any floor and the floor or roof next above.

- a. *Story, Half.* A story under a pitched roof at the top of a building the floor of which is not more than two (2) feet below the plate.
- b. *Story, First.* Any story having its finished floor surface entirely above grade except that the lowermost story shall not constitute a story within the meaning of Schedule IV-2 when it is used to provide required off-street parking in the form of a garage built in a one (1) or two (2) family dwelling. The foregoing paragraph shall not apply to R-1 residential zones where the maximum height shall not be limited to two and one-half (2 1/2) stories and thirty-five (35) feet in height and any above grade floor shall count as a story, including the garage space. The foregoing paragraph shall not apply in the R-1M zone where the maximum height shall be limited to two and one-half (2 1/2) stories and thirty-five (35) feet in height and any above grade floor shall count as a story including the garage space.

Street shall mean any street, avenue, boulevard, road, parkway, viaduct, drive or other way a. which is an existing State, County or municipal roadway; or b. which is shown upon a plat heretofore approved pursuant to law; or c. which is shown on a plat duly filed and recorded in the office of the County Recording Officer prior to the appointment of a planning board and the grant of such board of the power to review plats; and includes the land between the street lines, whether improved or unimproved, and may comprise pavement, shoulders, gutters, curbs, sidewalks, parking areas and other areas within the street lines.

Structure shall mean a combination of materials to form a safe and stable construction for occupancy, use, or ornamentation, whether installed on, above or below the surface of a parcel of land. Structures, or parts thereof, may include and are not limited to buildings, stadiums, reviewing stands, platforms, stagings, observation towers, radio towers, satellite dish antennas, water tanks and towers, trestles, piers, wharves, coal bins, container units, shelters, fences, steps, retaining walls, and display signs.

Swimming pool shall mean any structure having a depth greater than two (2) feet and a water surface area in excess of one hundred fifty (150) square feet which is used for swimming, bathing or wading purposes.

Telecommunications shall mean the electrical or electronic transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications equipment shall mean equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

Telecommunications service shall mean the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Topography shall mean the surface features of an area of land.

Tower shall mean a freestanding antenna support structure.

Townhouse shall mean a building designed for or occupied by no more than one (1) family or household and attached to other similar buildings or structures by not more than two (2) party walls extending from the foundation to and through the roof. Furthermore, each such dwelling unit shall be provided with cooking, sleeping and sanitary facilities for the use of each family or household of the townhouse. For the purpose of this chapter, a townhouse may include a building or structure in fee simple, condominium, cooperative or leasehold ownership or any combination thereof.

Trailer shall mean (i) a structure on wheels, towed or hauled by another vehicle and used for carrying materials, goods or objects, or (ii) a structure used as a temporary construction office in connection with construction projects.

Truck terminal shall mean an establishment primarily engaged in furnishing, hauling, or transfer services without long-term product or cargo storage and where trucks load and unload products or cargo for transshipment or reshipment without accessory consolidation, repacking or value added services. A truck terminal may also include accessory areas for the repair, service, maintenance, temporary storage, or parking of trucks.

Use shall mean the specific purpose for which land or building is designed, arranged, intended or for which it is or may be occupied or maintained.

Warehouse and distribution facility shall mean an establishment primarily used for the (i) indoor long term storage and/or distribution of goods, products or materials, or (ii) accessory consolidation, repackaging and value-added services of or to goods, products or materials. Such facility may include accessory areas for the repairs, service, maintenance, temporary storage or parking of trucks.

Wireless telecommunications shall mean the transmission and receipt of writing, signs, signals, pictures, and sounds of all kinds without the aid of wire, cable, or other like connection between the points of origin and reception of such transmission.

Yard shall mean an open space, which lies between the principal or accessory building or buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward except as herein permitted.

- a. *Yard, Front* shall mean an open space extending the full width of the lot between a principal building and the front lot line, unoccupied and unobstructed from the ground upward except as may be specified elsewhere in this chapter. The depth of the front yard shall be measured perpendicular to the front lot line.
- b. *Yard, Rear* shall mean an open, unoccupied space across the full width of the lot and lying between the rear line of the lot and the nearest line of the principal or accessory building. The depth of the rear yard shall be measured perpendicular to the rear property line.
- c. *Yard, Side* shall mean an open, unoccupied space between the side line of the lot and the nearest line of the principal or accessory building and extending from the front to the rear yard. The width of the side yard shall be measured perpendicular to the side line of the lot.

Variance shall mean the approving authority's authorized departure from the literal requirements and terms of this chapter in accordance with the procedures contained herein.

Wireless Telecommunications shall mean the transmission and receipt of writing, signs, signals, pictures, and sounds of all kinds without the aid of wire, cable, or other like connection between the points of origin and reception of such transmission.

Zone lot. See definition for lot.

Zoning Board shall mean the Board of Adjustment established under this chapter.

Zoning Map shall mean the Zoning Map of the Town of Kearny, New Jersey, together with all amendments subsequently adopted.

Zoning permit shall mean a document defined by N.J.S.A. 40:55D-7 and issued by the Zoning Official, which permits the use or erection, construction, reconstruction, alteration, conversion, or installation of a structure or building, and which acknowledges that such use, structure, or building complies with the provisions of the municipal zoning ordinance or variance duly authorized by a municipal agency pursuant to N.J.S.A. 40:55D-60 or N.J.S.A. 40:55D-70.

(Ord. No. 10-14-87 § 138-2.200; Ord. No. 11-8-89; Ord. No. 6-27-90; Ord. No. 12-12-90; Ord. No. 1999-O-2 § 1; Ord. No. 2000-0-27 § 1; Ord. No. 2002-O-78; Ord. No. 2003-(O)-23; Ord. No. 2003-(O)-31 § 1; Ord. No. 2004-(O)-12; Ord. No. 2004-(O)-64; Ord. No. 2004-(O)-70 § 1; Ord. No. 2006-(O)-06 § 1; Ord. No. 2006-(O)-09 § 1; Ord. No. 2006-(O)-20 §§ 1–3; Ord. No. 2006-(O)-29; Ord. No. 2006-(O)-30 §§ 1–3)

38-3 ESTABLISHMENT OF DISTRICTS AND ZONING MAP.

38-3.1 Districts Designated.

For the purpose of this chapter, the Town of Kearny is hereby divided into the following types of zone districts, differentiated according to use, area and bulk regulations and to be designated as follows:

Zone Designation	Zone Description
R-1	One-Family Residential
R-1M	One-Family Residential Manor Zone
R-2	One and Two-Family Residential
R-2B	One and Two-Family Residential/Hospital
R-3	Multi-Family Residential
C-1	Office
C-2	Neighborhood Business
C-3	Community Business
C-4	General Commercial
LI	Limited Industrial
M	Manufacturing
SKI-N	South Kearny Industrial North
SKI-S	South Kearny Industrial South
CEM	Cemetery
PRD	Planned Residential Development
CLH	Conventional and Limited Income Housing

(Ord. No. 10-14-87 § 138-3.100; Ord. No. 6-27-90; Ord. No. 12-12-90; Ord. No. 1999-O-2 § 2; Ord. No. 1999-O-7 § 1; Ord. No. 2004-(O)-11; Ord. No. 2004-(O)-64)

38-3.2 Zoning Map.

The location and boundaries of said districts are hereby established on the Zoning Map of the Town of Kearny initially dated October 1, 1997, and by any amendments thereto and which map is made a part of this chapter.*

a. Said Zoning Map shall be amended as recommended in the Town of Kearny Master Plan Re-Examination Report adopted December 2, 1998 to separate the former SKM Zone into SKM-1 and SKM-2 as depicted in Appendix D of the Re-Examination Report.

b. Said Zoning Map shall be amended as recommended in the Town of Kearny Master Plan Re Examination report adopted on May 7, 2003 to delete the former SKM-1 and SKM-2 Zones and replace the SKM-1 Zone with the new SKI-N Zone and the SKM-2 Zone with the

new SKI-S Zone. The location and boundaries of said districts are hereby established on the attached map dated October 2004.

c. The boundaries of said R-1M Zone shall be the Belleville Turnpike to the north, the existing R-1 Zone boundary line between Kearny Avenue and Grand Place to the east, the northerly side of Stewart Avenue to the south and the existing R-1 boundary line along Passaic Avenue to the west.

(Ord. No. 10-14-87 § 138-3.200; Ord. No. 6-27-90; Ord. No. 12-12-90; Ord. No. 1999-O-2 § 3; Ord. No. 1999-O-7 § 2; Ord. No. 2004-(O)-11; Ord. No. 2004-(O)-64)

38-3.3 Interpretation of Boundaries.

Reserved.

38-3.4 Designation of Zone Boundaries.

The zone boundary lines are intended generally to follow the center lines of streets; the center lines of railroad rights-of-way; existing lot lines; the center lines of rivers, streams and other waterways; and municipal boundary lines. When a district boundary line does not follow such a line, its position shall be shown on the Zoning Map by a specific dimension expressing its distance, in feet, from a street line or other boundary line as indicated. (Ord. No. 10-14-87 § 138.3.310)

38-3.5 Determination of Doubtful Lines.

In cases of uncertainty or disagreement as to the true location of any zone boundary line, the determination thereof shall lie with the Board of Adjustment. (Ord. No. 10-14-87 § 138.3.320)

38-4 DISTRICT REGULATIONS.

38-4.1 Schedule of Regulations.

The restrictions and controls intended to regulate development in each district are set forth in Schedule I, District Use Regulations^{*} and Schedule II, Area, Yard and Bulk Requirements, which are supplemented by other sections of this chapter. (Ord. No. 10-14-87 § 138-4.100; Ord. No. 6-27-90; Ord. No. 12-12-90; Ord. No. 1999-O-2 §§ 4–15; Ord. No. 1999-O-7 §§ 3–5; Ord. No. 2002-O-78; Ord. No. 2003-(O)-23; Ord. No. 2004-(O)-11; Ord. No. 2004-(O)-64; Ord. No. 2005-(O)-09 § 3; Ord. No. 2007-(O)-17 § 1; Ord. No. 2008-(O)-04 § 1)

38-4.2 Application of Regulations.

Except as hereinafter otherwise provided.

a. No building or structure shall be erected and no existing building or structure shall be moved, altered, added to or enlarged, nor shall any land or building be designed, used or

intended to be used for any purpose or in any manner other than as specified among the uses hereinafter listed as permitted in the district in which such building or land is located.

b. No building or structure shall be erected, reconstructed or structurally altered to exceed in height the limit hereinafter designated for the district in which such building is located.

c. No building or structure shall be erected, no existing buildings or structures shall be altered, enlarged or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity to the yard, lot area and building location regulations hereinafter designated for the district in which such building or open space is located.

d. No yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other building, and no yard or open space on one (1) lot shall be considered as providing a yard or open-space for a building on any other lot.

e. No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel other than the principal use to which it is ancillary, except as provided herein.
(Ord. No. 10-14-87 § 138-4.200)

38-4.3 General Use Restriction.

Any use which is not specifically designated as a principal permitted use, an accessory use or a conditional use is specifically prohibited from that zone district in the Town of Kearny.
(Ord. No. 10-14-87 § 138-4.300)

38-4.4 Temporary Quarters.

a. Notwithstanding any other provision of this Zoning Ordinance and specifically use regulations contained in Schedule I, District Use Regulations, in the event a residential dwelling in a R-1, R-2 or R-3 Zone District is substantially destroyed or damaged by fire or other casualty or an act of God, the owner/occupant of the dwelling upon application to the Construction Officer may be permitted to locate temporary living quarters on his or her property for a period not to exceed ninety (90) days, provided that in the opinion of the Construction Official the premises are repairable and the repairs may be accomplished within a period of ninety (90) days from the date of the damage. Under no circumstances shall any more than one (1) temporary living quarter be located on the property at any one time.

b. No approval for temporary living quarters shall be granted unless the applicant can display a valid special reason for the requested relief. The following shall be considered valid special reasons for purposes of this section:

1. Financial hardship;
2. Job residency requirement;
3. Enrollment of children in the local school system;
4. Protection of personal property remaining in the structure that cannot otherwise be relocated; or

5. Relocation would jeopardize the aggrieved person or persons everyday activities.

c. Approval for temporary living quarters shall be granted only when the adjoining property owners to either side and to the rear of the subject property give their written consent to the location of the temporary living quarters.

d. All temporary living quarters must conform to the requirements of the New Jersey Uniform Construction Code.
(Ord. No. 10-14-87 § 138-4.00; Ord. No. 5-12-82)

38-4.5 Trailers and Other Storage Structures.

a. The storage, parking or use of trucks, tractor, trailers, containers or any similar structure for storage purposes on a permanent basis is hereby prohibited in all districts enumerated in this zoning ordinance except SKI-N where it may be permitted subject to site plan approval. For purposes of this subsection, there shall be a rebuttable presumption that a truck, tractor, trailer, container or any structure is used for storage purposes on a permanent basis if such truck, tractor trailer, container or structure remains on the same or similar location continuously for more than seven (7) days while containing goods, chattels or merchandise of any kind.

b. The storage, parking or use of a house trailer, mobile home or office trailer by any person or persons on a permanent basis is hereby prohibited in all districts enumerated in this zoning ordinance. For purposes of this subsection, there shall be a rebuttable presumption that a house trailer, mobile home, or office trailer is used on a permanent basis if such house trailer, mobile home, or office trailer remains in the same or similar location continuously for more than seven (7) days.

Provided, however, that house trailers, mobile homes, or office trailers used as offices for construction projects may be permitted on written permit of the Construction Official for the duration of a particular construction project for which the structure is used.
(Ord. No. 10-14-87 § 138-4.500; Ord. No. 2004-(O)-64)

38-4.6 Sexually Oriented Businesses Prohibited in Certain Zones.*

a. No sexually oriented business as defined in N.J.S.A. 2C:33-12.2 and N.J.S.A. 2C:34-6 may or shall be located in the land areas contained within the zones presently designated as

R-1, R-2, R-2B, R-3, C-1, C-2, C-3, C-4, LI, M, SKI S, CEM, PRD and CLH or in any Redevelopment Area.

b. In addition to the restrictions imposed by N.J.S.A. 2C:34-7, no sexually oriented business may or shall be located within one thousand (1,000) feet of any location licensed for the retail sale or consumption of alcoholic beverages.

c. The bulk standards applicable to Restaurants, Eating and Drinking Establishments and Fast-Food Restaurants, set forth in Section 38-6, Schedule IVj. of the Revised General Ordinances shall apply to sexually oriented businesses.

(Ord. No. 2007-(O)-68)

SCHEDULE I Schedule of District Use Regulations

Town of Kearny			
<i>Zone</i>	<i>Permitted Principal Use</i>	<i>Permitted Accessory Use</i>	<i>Conditional Use</i>
R-1 and R-1M Single-Family Residential	<ol style="list-style-type: none"> 1. Single-family detached dwelling. 2. Municipal recreation buildings, parks, playgrounds. 3. Public buildings, libraries, public museums, memorial buildings, public fire stations. 	<ol style="list-style-type: none"> 1. Private garage subject to subsection 38-7.6. 2. Signs subject to subsection 38-6.8. 3. Home occupations subject to subsection 38-6.2e. 4. Accessory uses customarily incidental to a permitted principal use. 5. Permanent swimming pools subject to subsection 38-6.2c. 6. Satellite dish antennas subject to this chapter. 	<ol style="list-style-type: none"> 1. Essential services subject to subsection 38-6.6f. 2. Churches and other places of worship, including parish. 3. Public and private day schools not operated for profit, subject to subsection 38-6.6k.
R-2 Single and Two-Family Residential	<ol style="list-style-type: none"> 1. Any R-1 zone permitted principal use under the same conditions as prescribed therein. 2. Two-family dwelling unit. 3. Any multifamily dwellings devoted exclusively for the housing of persons ages 62 and over and handicapped persons, and which meets the eligibility guidelines set forth by the Department of Housing and Urban Development in regulations pertaining to the 202 Section 8 program as amended and supplemented. 	<ol style="list-style-type: none"> 1. Any R-1 permitted accessory use under the same conditions as prescribed therein. 	<ol style="list-style-type: none"> 1. Any R-1 conditional use under the same conditions as prescribed therein.

Schedule I - Schedule of District Use Regulations—Continued

<i>Zone</i>	<i>Permitted Principal Use</i>	<i>Permitted Accessory Use</i>	<i>Conditional Use</i>
R-2B	<ol style="list-style-type: none"> 1. Any R-2 Zone permitted principal 	<ol style="list-style-type: none"> 1. Any R-2 permitted accessory use under 	

	use under the same conditions as prescribed therein.	the same conditions as prescribed therein.	
	2. Community hospitals including training schools for professional personnel, ambulatory care facilities, parking lots, including multi-level parking structures, nursing home facilities, and housing facilities for professional trainees and personnel. It shall not include facilities for the care, treatment or housing of mental or drug abuse patients.	2. Community hospital related facilities.	
R-3 Multi-Family Residential	1. Any R-2 Zone permitted principal use under the same conditions as prescribed therein. 2. Garden apartment subject to Schedule III. 3. Multi-family dwellings subject to Schedule II. 4. Townhouses subject to subsection 38-6.1k.	1. Any R-2 permitted accessory use under the same conditions as prescribed therein.	1. Any R-2 conditional use under the same conditions as prescribed therein. 2. Clubs, lodges, social and community center buildings subject to subsection 38-6.6e. 3. Antenna, subject to subsection 38-6.6m.

Schedule I - Schedule of District Use Regulations—Continued

<i>Zone</i>	<i>Permitted Principal Use</i>	<i>Permitted Accessory Use</i>	<i>Conditional Use</i>
C-1 Office Zone	1. Any R-2 permitted principal use under the same conditions as prescribed therein. 2. Banks and other financial institutions. 3. Churches, other places of worship including parish houses, Sunday school buildings, subject to subsection 38-6.1d. 4. Offices, business and professional. 5. Post office. 6. Public buildings.	1. Any R-2 permitted accessory use under the same conditions as prescribed therein. 2. Off-street parking and loading facilities. 3. Signs subject to subsection 38-6.8. 4. Other accessory uses subject to subsection 38-6.3.	1. Any R-2 conditional use under the same conditions as prescribed therein. 2. Antenna, subject to subsection 38-6.6m.

	7. Real estate offices.		
	8. Restaurants, subject to subsection 38-6.6j.		
C-2 Neighborhood Business	Any C-1 permitted principal use under the same conditions as prescribed therein. Art galleries and studios, antique shops. Baker shops. Barber shops. Beauty parlors. Book and stationery stores. Butchers. Candy and confectionery. Clubs, lodges, social and community center buildings.	1. Any C-1 permitted accessory use under the same conditions as prescribed therein. 2. Accessory storage within a wholly enclosed permanent structure of material goods and supplies intended for sale or consumption on the premises.	1. Any C-1 conditional uses under the same conditions as prescribed therein. 2. Outdoor storage subject to subsection 38-6.6h. 3. Service stations subject to subsection 38-6.6i. 4. Mixed residential uses subject to subsection 38-6.6g. 5. Billboards subject to subsection 38-6.6d. 6. Antenna, subject to subsection 38-6.6m.

Schedule I - Schedule of District Use Regulations—Continued

<i>Zone</i>	<i>Permitted Principal Use</i>	<i>Permitted Accessory Use</i>	<i>Conditional Use</i>
C-2 Neighborhood Business, Cont.	Dance and exercise studios. Delicatessen stores. Drugstores. Dry-cleaning and laundry establishments subject to subsection 38-6.1b. Florist shops. Food and grocery stores. Hardware stores. Martial arts studios. Package liquor stores Painting, plumbing and wall paper stores. Photographic equipment and supply stores. Radio and television repair stores. Shoe repair stores. Tailors and dressmakers. Taxi stand and services.		

Travel agencies and offices.
 Undertakers and funeral parlors.
 Video rental stores.

Schedule I - Schedule of District Use Regulations—Continued

<i>Zone</i>	<i>Permitted Principal Use</i>	<i>Permitted Accessory Use</i>	<i>Conditional Use</i>
C-3 Community Business	Any R-3 permitted principal use under the same conditions as prescribed therein. Any C-2 permitted principal use under the same conditions as prescribed therein. Auto supply sales. Appliance stores. Automobile sales and service, new and used vehicles subject to subsection 38-6.1b. Banks, other financial institutions. Building supply stores. Carpet or rug cleaning subject to subsection 38-6.1a. Commercial, parking lot or public garage subject to subsection 38-6.1f. Dance studio. Department stores. Dry goods and variety stores. Electrical repairs and sales stores. Furniture repair, woodworking and custom upholstery. Furniture stores. Garden supply stores. Hobby and craft stores.	1. Any R-3 permitted accessory use under the same conditions as prescribed therein. 2. Any C-2 permitted accessory use under the same conditions as prescribed therein.	1. Any R-3 conditional use under the same conditions as prescribed therein. 2. Any C-2 conditional uses under the same conditions as prescribed therein. 3. Planned commercial development groups subject to subsection 38-6.10b. 4. Antenna, subject to subsection 38-6.6m.

Schedule I - Schedule of District Use Regulations—Continued

<i>Zone</i>	<i>Permitted Principal Use</i>	<i>Permitted Accessory Use</i>	<i>Conditional Use</i>
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C-3
Community
Business, Cont.

Movie theaters,
bowling alleys,
skating rinks, billiard
or pool parlors.
Newspaper or job
printing subject to
subsection 38-6.1i.
Pet shops.
Planned commercial
development. (See
subsection 38-6.10.)
Public utility
buildings and
telephone exchange
buildings.
Wearing apparel
shops.

C-4
General
Commercial

1. Any C-3 permitted principal use under the same conditions as prescribed therein, except for residential uses which are not permitted.
2. Automobile service and repair.
3. Printing plants or publishing.
4. Contractors' equipment, sales and service.
5. Lumber storage yards.
6. Planned commercial development. (See subsection 38-6.10.)

1. Any C-3 permitted accessory use under the same conditions as prescribed therein.

1. Any C-3 conditional use under the same conditions as prescribed therein.
2. Automobile washing establishments, subject to subsection 38-6.6c.
3. Animal hospitals and kennels subject to subsection 38-6.6b.
4. Antenna, subject to subsection 38-6.6m.

Schedule I - Schedule of District Use Regulations—Continued

<i>Zone</i>	<i>Permitted Principal Use</i>	<i>Permitted Accessory Use</i>	<i>Conditional Use</i>
LI Limited Industrial Zone	<ol style="list-style-type: none"> 1. Research laboratories. 2. Assembly or packaging of products from previously prepared materials. 3. Manufacture, assembly and/or packaging of electronics and electric components, instruments, precision tools, time pieces. 4. Public utility 	<ol style="list-style-type: none"> 1. Off-street parking and loading facilities. 2. Signs subject to subsection 38-6.8. 3. Accessory storage within a wholly enclosed permanent structure of materials, goods and supplies intended for sale or consumption on the premises. 4. Other accessory uses 	<ol style="list-style-type: none"> 1. Essential services subject to subsection 38-6.6f. 2. Outdoor storage subject to subsection 38-6.6h. 3. Billboards subject to sign subsection 38-6.6d. 4. Service stations subject to subsection 38-6.6i. 5. Automobile washing

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|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|--------------------------------------------------------------------------|
| | buildings. | subject to subsection 38-6.3. | establishments subject to subsection 38-6.6c. |
| 5. | Painting plants or publishing houses. | 5. Satellite dish antennas subject to subsection 38-6.240. | 6. Warehouses, commercial and industrial, subject to subsection 38-6.6j. |
| 6. | Light manufacturing operations. | 6. Antenna, subject to subsection 38-6.6m. | |
| 7. | Businesses using structures wherein office space is combined with a warehouse and/or distribution of products, provided that the office use accounts for a minimum of 5% of the total floor area. | 7. Tower, subject to subsection 38-6.6m. | |
| 8. | Planned industrial developments, subject to subsection 38-6.10. | | |
| 9. | Distribution terminals, parcel, delivery service industry. | | |
| 10. | Extraction or excavation operations subject to subsection 38-6.1g. | | |

Schedule I - Schedule of District Use Regulations—Continued

<i>Zone</i>	<i>Permitted Principal Use</i>	<i>Permitted Accessory Use</i>	<i>Conditional Use</i>
LI Limited Industrial Zone, Cont.	11. Glass and textile manufacture.		
	12. Truck terminals.		
	13. Lumber and building materials.		
	14. Contractors' equipment, sales and service.		
	15. Tool, die and pattern making, other machine shop operations		
	16. Wholesale business storage and warehousing.		
	17. Woodworking, furniture repair and custom upholstery.		
	18. Uses specifically prohibited are		

indicated in
subsection 38-6.7.

Schedule I - Schedule of District Use Regulations—Continued

<i>Zone</i>	<i>Permitted Principal Use</i>	<i>Permitted Accessory Use</i>	<i>Conditional Use</i>
M Manufacturing Zone	<ol style="list-style-type: none"> 1. Any LI permitted principal use under the same conditions as prescribed therein. 2. Any production, processing, manufacture, fabrication, cleaning, servicing, testing, repair or storage of goods, materials or products, and business offices accessory thereto, but not including the storage of flammable or explosive materials as a principal use. 3. Establishments for scientific research and development, and business offices accessory thereto, where the manufacturing fabrication, production, repair, storage, sale and resale of materials, goods and products is incidental and accessory to the principal use of scientific research and development. 	<ol style="list-style-type: none"> 1. Any LI permitted accessory use under the same conditions as prescribed therein. 2. Antenna, subject to subsection 38-6.6m 3. Tower, subject to subsection 38-6.6m. 	Any LI conditional use under the same conditions as prescribed therein.

Schedule I - Schedule of District Use Regulations—Continued

<i>Zone</i>	<i>Permitted Principal Use</i>	<i>Permitted Accessory Use</i>	<i>Conditional Use</i>
M Manufacturing Zone, Cont.	<ol style="list-style-type: none"> 4. Business or commercial establishments which provide supplies and/or services primarily to industrial and manufacturing customers, and business offices accessory thereto. 		

5. Automobile service stations.
6. Automobile and truck leasing and sales, exclusive of semi-trailers.
7. Boat sales, rental and repair.
8. Warehouses, wholesale establishments, and other storage facilities.
9. Uses specifically prohibited are indicated in subsection 38-6.7a.

Schedule I - Schedule of District Use Regulations—Continued

<i>Zone</i>	<i>Permitted Principal Use</i>	<i>Permitted Accessory Use</i>	<i>Conditional Use</i>
SKI-N South Kearny Industrial North	<ol style="list-style-type: none"> 1. Any M Zone permitted principal use under the same conditions as prescribed therein. 2. Contractor and construction offices, shops and yards. 3. Motor freight facilities, freight, forwarding facilities, intermodal facilities truck terminals and warehouse and distribution facilities. 4. Railroad terminals and yards. 5. Garages for the storage, repair and servicing of motor vehicles (including body repair, painting and engine rebuilding). 6. Resource recovery systems. 7. Ship building, repair and disassembly. 8. Uses specifically prohibited are indicated in 	<ol style="list-style-type: none"> 1. Any M zone permitted accessory use under the same conditions as prescribed therein. 	<ol style="list-style-type: none"> 1. Any M zone conditional use under the same conditions as prescribed therein. 2. Planned commercial development groups subject to subsection 38-6.10.

subsections 38-6.6m.
and 38-6.7a.

9. Antenna, subject to subsection 38-6.6m.
10. Tower, subject to subsection 38-6.6m.

Schedule I - Schedule of District Use Regulations—Continued

<i>Zone</i>	<i>Permitted Principal Use</i>	<i>Permitted Accessory Use</i>	<i>Conditional Use</i>
SKI-S South Kearny Industrial South	1. Any SKI-N Zone permitted principal use under the same conditions as prescribed therein with the exception of truck terminals, motor freight facilities, freight forwarding facilities, intermodal facilities, trailers and railroad terminals and yards.	1. Any M Zone permitted accessory use under the same conditions as prescribed therein. 2. All operations, activities and storage shall be conducted within completely enclosed buildings.	1. Any M Zone conditional use under the same conditions as prescribed therein. 2. Planned commercial development groups subject to subsection 38-6.10. 3. Outdoor storage exclusive of shipping and storage containers. 4. All operations, activities and storage shall be conducted within completely enclosed buildings.
CEM Cemetery Zone	Cemeteries including vaults, chapels, crypts, mausoleums, and other structures intended to hold or contain the dead, subject to subsection 38-6.10c.	1. Accessory uses customarily incidental to a permitted principal use.	1. Essential services subject to subsection 38-6.6f.
PRD Planned Residential Development	1. Planned Residential Development subject to subsection 38-6.1m.	1. Any R-1 permitted accessory use under the same conditions prescribed therein.	1. Any R-1 conditional use under the same conditions as prescribed therein.
CLH	1. Conventional and Limited Income Housing Development subject to the provisions of subsections 38-6.1n. and 38-6.10d.	1. Any R-1 permitted accessory use under the same conditions as prescribed therein.	1. Any R-1 conditional use under the same conditions as prescribed therein.
Redevelopment Area			1. Antenna, subject to subsection 38-6.6m.

SCHEDULE II Schedule of Area, Yard and Bulk Requirements,

Click [HERE](#) for Schedule II

38-5 SUPPLEMENTARY LOT, HEIGHT AND YARD REGULATIONS.

38-5.1 Lot Regulations.

a. *Existing Zone Lots of Record.* In any residential zone, only a one-family dwelling may be erected on a nonconforming zone lot of official record at the effective date of this chapter, as to minimum lot area; provided, however, that no adjacent or adjoining vacant land exists or existed at the time of the effective date of this chapter which would create a conforming lot if all or part of the vacant land were combined with subject lot. No lot or lots in single ownership hereafter shall be reduced so as to create one (1) or more nonconforming lots. The conversion of a dwelling to three (3) or more dwelling units on a lot of nonconforming area shall be considered a variance under N.J.S.A. 40:55D-70d.(5).

b. *Lot Width.* The minimum lot width of any lot shall be measured at the front yard setback line as required for the district in which it is located. In cases of irregularly shaped lots whose sides are not parallel, the street frontage shall not be less than the seventy-five (75%) percent of the minimum lot width required; provided, however, that the lot width as measured at the front yard setback line shall be no less than the minimum lot width, as specified in the Zoning Schedule, for the district in which the lot is contained.

c. *Corner Lots.* At all street intersections involving Passaic Avenue, Belgrove Drive, Kearny Avenue, Davis Avenue, Schuyler Avenue, Midland Avenue, Bergen Avenue and Belleville Turnpike, no obstruction exceeding thirty (30) inches in height above the established grade of the street at the property line, other than an existing building, post, column, hedge or tree, shall be erected or maintained on any lot within the sight triangle area bounded by the line drawn between points along such street lot lines twenty-five (25) feet distant from their intersection. The determination of the front yard of a corner lot shall be at the option of the owner or developer and shall be so designed on all maps and official records.

On a corner lot involving any one of the above mentioned major streets, each story or part of a building, shall be set back from the side street a minimum of one-half (1/2) the required front setback or fifteen (15) feet in an R-1 or R-2 Zone and ten (10) feet in an R-3 zone, whichever is greater. The provisions of the sight triangle area, indicated in the preceding paragraph shall prevail where there is a conflict with the provisions of this section. All other corner lots in any R-1 Zone, shall have two (2) front yards. The minimum front yard setback on the shorter street frontage of the property shall be twenty (20) feet, or the prevailing setback of the neighborhood, whichever is greater; and, the minimum front yard setback on the longer street frontage of property shall be a minimum of eight (8) feet, unless otherwise provided in the preceding paragraph in 38-5.1c above.

All corner lots in the R-1M Zone shall have two (2) front yards. The minimum front yard setback shall be twenty (20) feet or the prevailing setback of the neighborhood, whichever is

greater. The minimum lot frontage for corner lots shall be sixty (60) feet; the minimum lot area shall be six thousand (6,000) square feet.

d. *Through Lots.* A through lot shall be considered as having two (2) street frontages, both of which shall be subject to the front yard requirements of the Zoning Schedule of this chapter.

e. *Required Area or Space Cannot Be Reduced.* The area or dimension of any zone lot, yard, parking area, nonconforming use, or other space shall not be reduced to less than the minimum required by this chapter; and if already existing as less than the minimum required by this chapter, the area or dimension may be continued and shall not be further reduced. (Ord. No. 10-14-87 § 138-5.100; Ord. No. 2004-(O)-12; Ord. No. 2005-(O)-09 § 2)

38-5.2 Frontage Upon a Street.

a. Every principal building shall be built upon a lot with frontage upon an improved and approved street in accordance with the street standards established by the Town of Kearny.

b. Any property which contains access to one (1) or more approved and improved streets at its property line but does not contain sufficient street frontage as required herein shall not be construed to be landlocked. Where such conditions do exist or are created by virtue of a subdivision, no building permit or occupancy permit shall be granted unless and until the property contains the required amount of street frontage as required herein.

c. Reserved.

d. *Lot Located in More Than One (1) Zone.* For any zone lot which is located in more than one (1) zone district, which district differs in character by permitting residential, commercial or industrial uses, all yard, bulk and other requirements shall be measured from the zone boundary line and not the true lot line.

(Ord. No. 10-14-87 § 138-5.100; Ord. No. 1999-O-2 §§ 16–17, 37)

38-5.3 Yard Regulations.

a. *General.*

1. Required courts or yards shall be open to the sky, unobstructed except for the ordinary projection of parapets, skylights, window sills, doorposts, rainwater leaders and ornamental features, which may project not more than six (6) inches into such yard or court. Roof overhangs may extend into any required yard a distance not to exceed eighteen (18) inches, unless the yards are in excess of eight (8) feet, in which case a roof overhang may extend a distance not to exceed three (3) feet.

2. In residential districts, an open porch, one (1) story in height, may project not more than eight (8) feet into the required front yard, except as provided in subsection 38-5.1c. In no distance shall an open porch be located closer than ten (10) feet to a front lot line including any steps thereto and in no case shall it extend further than five (5) feet beyond the majority of houses on the street.

b. *Projection into Required Yards.* Certain architectural features may project into required yards as follows:

1. A cornice may project into the required front yard to an extent not exceeding three (3) feet or over a side yard, outer lot line court or a rear yard to an extent not exceeding one-fourth (1/4) of the width of such yard or court, or to a distance of one (1) foot in any case and to a maximum distance of not over three (3) feet.

Wall-mounted roofs over first floor front facade entryways may project into the required front yard but not into the public right-of-way provided such roofs cover no more area than a rectangle extending four (4) feet from the wall and having a width of no more than six (6) feet and provided such roofed entryways remain open and not enclosed by screening or any other type of enclosure.

2. Ground-story bay windows, oriels or balconies may project not more than three (3) feet into any required side yard which has a width of eight (8) feet or more. No such projecting structure shall have a width of greater than twelve (12) feet. Uncovered steps and/or platforms may be permitted in any side yard, provided they are no more than three (3) feet high and eight (8) feet in length, and do not extend more than three (3) feet from the side wall, providing the remaining side yard is not less than two (2) feet. Chimneys may project not more than three (3) feet into any required side yard; provided, however, that such chimneys in an R-1 District must be at least three (3) feet from the side lot line, and in R-2 and R-3 Districts, said chimneys must be at least two (2) feet from the side lot line.

(a) Residential structures. Exterior chimneys or vents must be encased with either brick or other faced material compatible with the existing exterior finish.

(b) Commercial structures. Exterior chimneys or vents which face a public right-of-way or are in public view, must be encased with either brick or other faced material compatible with the existing exterior finish.

3. An open fire escape or balcony to a fire tower may project no more than four (4) feet into a required yard area.

4. Patios may be located in any side or rear yard, provided that they are no closer than two (2) feet to any property line.

5. Raised platforms including decks, swimming pool decks, and uncovered porch platforms may be located in any side or rear yard provided that such structure is not closer than three (3) feet to any property line. Such structures are not subject to lot coverage or improved lot coverage requirements.

(a) Definitions.

Balcony, exterior shall mean an exterior floor projecting from and supported by a structure without additional independent supports.

Deck shall mean all exterior floor supported on at least two (2) opposing sides by an adjacent structure, and/or posts, piers or other independent supports.

Porch shall mean a roofed open area, which may be screened, usually attached to or part of and with direct access to or from a building.

(b) Raised platforms and platforms surrounding aboveground swimming pools may be located in any side or rear yard provided that such structure is not closer than three (3) feet from any property line. Such structures are not subject to lot coverage or imposed lot coverage requirements.

6. Decks may be allowed subject to the following conditions:

(a) Decks shall only be located in the side or rear yards of a specific property.

(b) Decks shall be subject to the bulk yard requirements (side and rear yard) of the zone in which they are located, however, a deck may extend ten (10) feet into the rear yard setback.

(c) The deck structure shall be calculated into the improved lot coverage requirements of the zone in which they are located to the extent that the area of the deck exceeds one hundred (100) square feet.

(d) Second story decks may be allowed but may not be larger than one hundred (100) square feet.

c. *Front Yard Exception.* Every lot in a residential district shall have a front yard as required in Schedule II, Area, Yard and Bulk Requirements* except that within the same residential district where the average front setback of existing buildings along the same side of the street, within the same block, and within two hundred (200) feet of the subject lot is greater than that in Schedule II, that average setback shall be considered the minimum. The required building setback shall apply to any story or part of any building except that cornices and eaves shall be allowed to protrude up to two (2) feet further than the main building wall. The front yard setback in R-1 Zones shall be the prevailing setback of the neighborhood. If the setback is greater than the minimum twenty (20) foot front yard setback, the greater setback shall prevail. The front yard setback in the R-1M Zone shall be the prevailing setback of the neighborhood. If the length is greater than the minimum twenty (20) feet front yard setback, the greater setback shall prevail.

Where the front yard is not controlled by the preceding paragraph, no principal residential building shall extend within the specified distance from the front lot line indicated in Schedule II, Area, Yard and Bulk Requirements, except that an uncovered porch may extend into a required front yard as indicated herein.

d. *Front Yard Requirements Affected by Official Map or Master Plan.* Where any lot fronts upon a street right-of-way which is proposed to be widened as indicated on the Official Map of the Town of Kearny, or in the adopted Master Plan of the Town of Kearny or by the Hudson County Master Plan or Official Map, as provided by law, the front yard or front side in such district shall be measured from such proposed future right-of-way line.

e. *Rear Yard Exception.* When, at the time of the adoption of this chapter, there is a lot of less than one hundred (100) feet depth, the rear yard may be reduced one (1) foot for every two (2) feet of deficiency from the prescribed depth of the rear yard, provided no part of any rear yard shall be less than twenty (20) feet in depth.

f. *Courts.*

1. In any residential district, where permitted, the minimum width of an inner court at its lowest level shall not be less than eight (8) inches per foot of height of the enclosing walls of such court measured from the sills of the lowest story served by it, and the maximum horizontal dimension of an inner court shall be not less than twice its width; the least width of an outer court between the walls thereof shall be at any given height not less than four (4) inches per foot of such height. The depth of an outer court shall not exceed twice the width.

2. In any business or industrial district, where permitted, the minimum width of an inner court at its lowest level shall be not less than four (4) inches per foot of height of the enclosing walls of such court measured from the sills of the lowest story served by it; the least width of an outer court on a lot line shall be at any given height not less than three (3) inches per foot of height above the lowest level of such court. The depth of an outer court shall not exceed twice its width.

g. *Yard Requirements for Apartments in Commercial Zones.*

1. **Front Yard.** For any building in a commercial zone used for residential purposes, in whole or in part, a front yard setback shall be provided which shall be equal to one-half (1/2) the height of the building or a minimum of ten (10) feet, whichever is greater.

2. **Side Yard.** If a business building is used for dwelling purposes above the first floor, such residential part of the building as may be more than two (2) rooms deep shall be set back not less than four (4) feet from any side lot line.

3. **Rear Yard.** For any building in a commercial zone used for residential purposes, in whole or in part, or for any story of a building containing living or sleeping rooms, a rear yard shall be required with a minimum depth of twenty (20) feet, and its level shall be not higher than the floor of the lowest story containing living quarters.

(Ord. No. 10-14-87 § 138-5.200; Ord. No. 1999-O-2 §§ 18–20; Ord. No. 2004-(O)-12; Ord. No. 2005-(O)-09 § 2; Ord. No. 2005-(O)-42 § 6)

38-5.4 Height Regulations.

a. *General Application.* No building or structure shall have a greater number of stories or greater number of feet than are permitted in the district where such building is located.

b. *Permitted Exceptions.* Height limitations stipulated elsewhere in this chapter shall not apply to church spires, belfries, cupolas and domes, monuments, chimneys, gas holders or water towers, smokestacks, elevator towers and enclosures, flagpoles, fire towers, or water tanks, steeples, (occupying in the aggregate less than ten (10%) percent of the roof area where they are located) television aerials, or to parapet walls, except that no parapet wall may extend more than four (4) feet above the limiting height of the building. Mechanical appurtenances such as condensers, exhaust fans, elevator housing and other similar equipment are exempt from these height restrictions provided they do not extend more than fifteen (15) feet above the maximum height limitation and are suitably screened. A mezzanine story shall also be considered to be a full story.

(Ord. No. 10-14-87 § 138-5.300)

38-5.5 Maximum Lot Coverage.

The maximum lot coverage on each zone lot shall not be greater than is permitted in the district where such buildings and structures are located and shall include all porches, chimneys, extensions and accessory buildings. (Ord. No. 10-14-87 § 138-5.400)

38-5.6 Maximum Improved Lot Coverage.

The maximum improved lot coverage shall not exceed the percentage indicated in the Schedule of Area, Yard and Bulk Requirements* herein for each zone district designated. (Ord. 10-14-87 § 138-5.500)

38-5.7 Number of Buildings Restricted.

There shall be not more than one (1) principal building on each zone lot in any residential district, except as provided in subsection 38-5.9 paragraphs h, k and m. (Ord. No. 10-14-87 § 138-5.600; Ord. No. 6-27-90)

38-5.8 General Landscaping Requirements.

a. *Enclosed Uses.* Any enclosed use required by any Town Ordinance to be landscaped shall provide a fence, or a visual screen as may be required by the approving authority, designed to produce a dense cover consisting of evergreen or evergreen type hedges or shrubs, spaced at intervals of not more than six (6) feet, located and maintained in good condition within ten (10) feet of the property line.

b. *Unenclosed Uses.* Any use which is not conducted within a completely enclosed building including but not limited to storage yards, lumber and building materials yards, and parking lots, shall be entirely enclosed by a fence as may be required by the approving authority. This section shall not apply to nurseries, or to automobile or trailer sales areas, except when abutting a residential zone.

c. *Maintenance.* Any fencing or landscaping installed in accordance with this section shall be maintained in good order to achieve the objectives of this section. Failure to maintain fencing or to replace dead or diseased landscaping shall be considered a violation of this chapter.

d. *Front Yards in the R-1M Zones.* The front yard areas in the R-1M Zone shall be landscaped with grass and/or other vegetative cover, shrubs and/or trees to a minimum of seventy (70%) percent of the front yard area. The "front yard area" is defined as the area between the front street line and the building line across the full width of the lot. In addition, no trees located on the street frontage shall be removed to provide driveway access.

e. *Front Yards in R-1 Residential Zones.* The front yard areas in R-1 Zones shall be landscaped with grass and/or other vegetative cover, shrubs and/or trees to a minimum of seventy (70%) percent of the front yard area. The "front yard area" is defined for purposes of this

section as the area between the front street line and the building line across the full width of the lot. In addition, no trees located on the street frontages shall be removed to provide driveway access.

(Ord. No. 10-14-87 § 138-5.700; Ord. No. 2004-(O)-12; Ord. No. 2005-(O)-09 § 2)

38-5.9 Grading of Lots.

a. *Title.* This subsection shall be known as the Town of Kearny Lot Grading Ordinance.

b. *Purpose.* The purpose of this subsection is to control and regulate the indiscriminate or excessive removal of soil thereby creating drainage issues, stormwater runoff, soil erosion large-scale clear-cutting and destruction of trees and to control, regulate and prevent conditions which cause an increase in stormwater run-off, sedimentation, soil erosion, air or noise pollution, or impair the ambiance or physical appearance of a neighborhood. The regulations contained in this subsection are designed to limit such adverse impact while not interfering with the right of a town property owner to appropriately remove trees in accordance with the regulations as set forth hereinbelow.

c. *Governed Acts.* No person may alter, remove or otherwise disturb land or soil on any lot or property within the Town of Kearny, except in accordance with the terms and conditions of this subsection.

d. *Zoning Grading Permit Required.* No person directly or indirectly shall alter, remove or otherwise disturb land or soil on any lot or property without having obtained a zoning grading permit as follows:

1. **Permit Required Prior to Land Disturbance or Construction.** No land area shall be developed by any person such that:

(a) The rate of stormwater runoff occurring at the area is increased over what occurs there under existing conditions.

(b) The drainage of adjacent areas is adversely affected.

(c) Soil erosion during and after development is increased over what naturally occurs there under existing conditions.

(d) Soil absorption and ground water recharge capacity of the area is decreased below what occurs there under existing conditions.

(e) The natural drainage pattern of the area is significantly altered.

Unless the Town Engineer has first approved a lot grading and soil erosion and sediment control plan for the proposed activity and the Construction Code Office has issued a zoning grading permit to allow such activity to proceed.

2. **Exemptions from Requirement.**

(a) Any development which has received site plan or subdivision approval from the Planning Board or Board of Adjustment shall be exempt from the requirements of Subsection A of this section; provided, however, that individual lots for one or two-

family dwellings included within any approved subdivision shall not be exempt by this paragraph d, 2 (a).

(b) Provided that there are no environmentally sensitive areas, such as but not limited to, steep slopes, wetlands, streams or bodies of water located in the area to be graded or disturbed and further provided that, in the opinion of the Town Engineer, the proposed land disturbance will not create a soil erosion problem, then the following exemptions may be granted by the Construction Code Enforcement Official:

(1) Land disturbance of less than fifteen (15%) percent of total lot area.

(2) Land disturbance for the purpose of constructing an addition less than three hundred fifty (350) square feet to an existing single- or two-family dwelling.

Any proposed land disturbance exempted by the provisions of paragraphs d, 2 (a) and/or d, 2 (b) (1) or (2), shall not be required to obtain a zoning grading permit.

3. Grading Plan Preparation and Contents. The lot grading and soil erosion control plan shall be prepared by a professional engineer licensed by the State of New Jersey. The plan must detail how the requirements of paragraph d, 1 will be met. If the site currently has a drainage problem as the result of previous development, the plan should propose a method to address the existing conditions. The Town Engineer will review the plan to determine if the improvement is feasible and warranted. Two (2) copies of the plan shall be submitted to the Construction Code Office together with two (2) copies of an application for a zoning grading permit and the fee required by paragraph, 5 of this subsection. The lot grading and soil erosion and sediment control plan shall contain the following information:

(a) Date.

(b) Layout of proposed buildings and structures.

(c) North arrow; scale; block and lot number of the subject property (or properties); name and address of record owner; name address, license number and seal of the person preparing the plan.

(d) Complete lot boundary line information based on a current survey prepared by a New Jersey licensed land surveyor.

(e) Building setback lines, lines of existing streets, easements affecting the property and any areas dedicated to public use.

(f) Location of existing buildings and structures, if any, including walls, fences, culverts and bridges. Spot elevations as to all such structures shall be provided. Structures to be removed shall be indicated by dashed lines.

(g) Location of all existing and proposed storm drainage structures. The information shall include proposed methods of controlling on-site stormwater, and may include grading, use of underground leaders to stormwater systems or dry wells, and other similar or related methods.

(h) Existing contours at two-foot intervals where slopes are less than ten (10%) percent and five-foot intervals where slopes are ten (10%) percent or greater. Existing contours shall be shown by dashed lines.

(i) Proposed contours with similar intervals. Proposed contours shall be shown by solid lines. All changes in grade proposed on site or adjacent to the building must be delineated on the Proposed Contour Plan.

(j) Location of existing rock outcroppings, high points, watercourses, depressions, ponds, marshes, wooded areas and other significant natural features.

(k) Proposed use of land, buildings and other structures, including driveways, roads, curbs, sidewalks and other paved areas.

(l) Existing and proposed utility locations.

(m) Landscaping plans showing existing vegetation to remain and all areas to be seeded or planted. Size and type of proposed trees and shrubs shall be indicated. All trees eight (8) inches DBH or greater shall be shown.

(n) Disturbance fencing shall be provided around the limits of all areas of disturbance.

(o) Silt fencing and/or hay bales shall be provided downstream of all areas of all areas of disturbance.

(p) Such other information as may be required by the Town Engineer in order to determine that the requirements of this section have been met.

(q) Narrative describing the existing conditions and any proposed improvements as a result of the change in grade.

4. Time for Action. The Town Engineer shall review and approve, conditionally approve or deny the lot grading permit application within thirty (30) days of the date on which a complete application is submitted. Otherwise, the applications for a grading permit shall be deemed to be approved.

5. Fee. Each applicant for a zoning grading permit under this subsection shall submit a review fee payable to the Town of Kearny in the amount of two hundred (\$200.00) dollars for the review by the Town Engineer and a twenty-five (\$25.00) dollar fee for the issuance of the permit.

e. *General Requirements.* Since considerable soil erosion can take place during land disturbance, development plans shall contain proposed soil erosion and sediment control measures. The measures shall be incorporated into the final plan and final construction drawings. Soil erosion and sediment control measures shall conform to the Standards and Specifications for Soil Erosion and Sediment Control. The measures shall apply to all features of the construction site, including street and utility installations as well as to the protection of individual lots. Measures shall also be instituted to prevent or control soil erosion and sedimentation during the various stages of development.

f. *Guaranties.* Improvements or such other measures on an approved lot grading plan that may be required subsequent to the start of construction or site development work may be deferred until such appropriate time as when required. The Town Engineer shall provide for the posting of performance guaranties and maintenance bonds in the same manner as provided in this ordinance. For drainage (i.e., piping) catch basins.

g. *Review and Approval of Plan; Copies of Decision.* If required, the Town Engineer shall refer soil erosion and sediment control portion of the application to the Hudson County Soil Conservation District or such other local, County, State or Federal agency as may be particularly qualified to review said plan, and no approval of the Town Engineer shall be given until after receipt and recommendations thereof. Such review and approval shall be made within a period of thirty (30) days of submission of a complete application unless, by mutual agreement in writing between the municipality and the applicant, this period is extended for an additional thirty (30) days. Failure of the municipality to make a decision within such period of such extension thereof shall constitute certification. The applicant shall be provided with written notice of such decision by the Town Engineer or other authorized municipal agent. A copy of such decision, including name of applicant, site location by street address and block and lot number, and proposed land use shall be sent to the Hudson County Soil Conservation District. The municipality shall also make available such other information as may be required by the District.

h. *Maintenance.* Individuals or developers carrying out soil erosion and sediment control measures under this subsection, and all subsequent owners of property on which such measurers have been installed, shall adequately maintain all permanent soil erosion control measures, devices and planting in effective working condition for a period of two (2) years after completion of the approved plan implementation. The Town Engineer shall give the applicant upon request a certificate indicating the date on which the measurers called for in the approved plan were completed.

i. *Enforcement.* The requirements of this subsection shall be enforced by the Construction Code Enforcement Department, which shall inspect or require adequate inspection of the work. If the Construction Code Enforcement Department finds any existing conditions not as stated in any application, he may refuse to approve further work, and shall notify the Construction Code Official in writing, of the reasons for refusal, and may additionally require necessary engineering measures to be promptly installed and may seek other penalties as provided in Chapter I, Section 1-5, plus all applicable assessments, surcharges and court costs.

j. *Maintenance Guaranties.* Pursuant to the provisions of paragraph e. of this subsection, the Town may require a maintenance guaranty in favor of the Town of Kearny in an amount not to exceed fifteen (15%) percent of the estimated cost of improvements called for by the lot grading plan, as the total cost thereof shall be estimated by the Town Engineer. Said maintenance guaranty shall run for a period of two (2) years and said guaranty shall provide for the proper repair and/or replacement of any such improvements during said period of two (2) years. The said two-year period shall run from the date of the issuance of the first certificate of occupancy for the last home in such development as shown on the preliminary plat, or the date of issuance of the certificate of occupancy for a site plan.

(Ord. No. 2004-(O)-69 §§ 1.1 -1.10)

38-6 SUPPLEMENTARY USE REGULATIONS.

38-6.1 Regulations Governing Certain Permitted Uses.

a. *Automobile Sales, New and Used.* The open display or storage for sale of used or new motor vehicles shall be screened in accordance with the requirements of subsection 38-5.10.

In addition, the uses shall be subject to the requirements of the special ordinance of the Town of Kearny licensing and regulating the businesses.

b. *Carpet and Rug Cleaning Establishments and Dry Cleaning Establishments.* Carpet and rug cleaning establishments and dry cleaning establishments, where permitted, shall meet the following requirements:

1. Not more than five (5) mechanics or skilled workers are employed on the premises, except as hereinafter specified.
2. That no mechanical power exceeding five (5) rated horsepower is utilized.
3. That no steam pressure exceeds eighty (80) pounds per square inch gauge pressure, and
4. The major portion of the products manufactured or treated is to be sold at retail on the premises or the service is performed primarily for residents of the locality.
5. Only the ground floor or an equivalent area shall be used for such purposes.

c. *Cemeteries.* Any property used as a cemetery shall be provided with an entrance on a street or road which shall have a pavement width of not less than twenty (20) feet, with ingress and egress so designated as to minimize traffic congestion, and a minimum six (6) foot high fence or evergreen or evergreen-type hedge or shrubs at intervals of not more than six (6) feet, or a minimum of ten (10) feet of permanently maintained planting strip on all property lines abutting any R District or residential street. No interment shall take place closer than fifteen (15) feet to any street right-of-way line. In the event a wider street right-of-way line is designated on the Town Official Map or Master Plan, the requirements shall be measured from the proposed realignment or widened alignment as indicated on the Official Map or Master Plan.

d. *Churches and Other Places of Worship.* Churches, synagogues and other places of worship shall be governed by the following regulations:

1. Area, bulk and yard requirements:
 - (a) Minimum Lot Area: 20,000 square feet
 - (b) Minimum Lot Width: 100 feet
 - (c) Minimum Front Yard: 20 feet
 - (d) Minimum Side Yard: 7 feet each
 - (e) Minimum Rear Yard: 20 feet
 - (f) Maximum Lot Coverage: fifty (50%) percent
 - (g) Maximum Improved

Lot Coverage:

ninety (90%) percent

2. Any church facility which maintains a school accredited by the State of New Jersey for elementary or high school grades shall also provide, in addition to the minimum lot area standards for the church, synagogue or other place of worship, a minimum lot area as approved by the New Jersey State Board of Education.

e. *Community Buildings, Clubs, Social Halls, Lodges, Fraternal Organizations and Similar Uses.*

1. All buildings shall be located a minimum of ten (10) feet from a side or rear property line and a minimum of twenty (20) feet for a front yard or the minimum front yard setback in the district in which it is located, whichever is greater.

2. In R-Districts, where permitted, there may be included retail sales for members and their guests only.

f. *Commercial and Public Parking in Commercial and Industrial Uses.* Commercial and public parking facilities used for the storage of automobiles by the hour, day, week or month shall be subject to the following criteria and standards:

1. Any entrance or exit shall be located at least fifty (50) feet from the intersection of any street lines.

2. All interior roadways and parking berths shall be paved with a dust proof surface.

3. Landscaping shall be required as provided in the Kearny Town Subdivision and Site Plan Ordinance, to screen the parking lot from abutting or adjacent residential areas and to maintain the character of the neighborhood.

4. No public garage or commercial parking lot shall have an entrance or exit connected with a public street at a point closer than two hundred (200) feet, measured along the street line on the same or opposite side of the street, to a main entrance of a public or private school, public library, church, theater, hospital, fire station, playground, orphanage or children's home housing children under sixteen (16) years of age, or other public gathering place, or to any street entrance to such buildings or public gathering places.

5. No part of any vehicle entrance to or exit from any public garage or commercial parking lot shall be closer than fifty (50) feet to the boundary line of any residential district.

6. No part of any public garage shall have a gasoline or oil pump, car lift or other service appliance used to serve or supply motor vehicles erected within twenty-five (25) feet of any boundary line of any residential district.

7. No part of any public garage shall be used for auto body repair or painting.

g. *Extraction or Excavation Operation.* The extraction or excavation of soil, sand, gravel, rock, and other surface or sub-surface materials and/or the processing of same shall meet the following requirements:

1. Performance Standards. The performance standards of the Town and New Jersey Department of Environmental Protection shall apply to the excavation and extraction of natural resources. The application shall also comply with standards of the New Jersey Soil Conservation Service.

2. Structural Maintenance. All buildings and structures shall be maintained in an adequate and safe condition at all times.

3. Protective Fencing. The approving authority shall require protective fencing or other means of protection at the site of an excavation.

4. Rehabilitation. All land which has been excavated must be rehabilitated in accordance with standards set within one (1) year after the termination of operations; at the expense of the operator. It is further provided that where an excavation operation has lasted longer than one (1) year, rehabilitation of land in accordance with standards set must be begun and completed within one (1) year's time. The Town may require a performance bond or some other financial guarantee that the conditions of this chapter shall be satisfied.

(a) All excavations must be either made to a water-producing depth, or graded and back filled.

(b) Excavations made to a water-producing depth shall be properly sloped to the water line, with banks sodded or surfaced with soil of an equal quality to adjacent land area topsoil; such topsoil required under this section shall be planted with trees, shrubs, legumes, or grasses.

(c) Excavations not made to a water-producing depth must be graded or backfilled with non-noxious, nonflammable, noncombustible solid material and in a topographic character which will result in substantial conformity to adjacent lands. Such grading or backfilling shall be designed to minimize erosion and shall be surfaced with a soil equal in quality to that of adjacent land area and planted with trees, shrubs, legumes, or grasses.

All buildings and structures used in such operations shall be dismantled and removed by and at the expense of the operator within one (1) year following termination of the operations.

5. Landscaping. The provisions of subsection 38-5.10 shall also apply.

6. Soil Mining Ordinance. In addition, all requirements of the soil mining ordinance shall be complied with. In the event these subsections are inconsistent with this ordinance, the more restrictive code shall apply.

h. *Garden Apartments and Multiple-Family Dwellings*. In addition to the area, bulk and yard requirements indicated in Schedule II, Area, Yard and Bulk Requirements*, the following requirements are also applicable for garden apartments and multiple-family dwellings.

1. Garden Apartments.

(a) Density requirements. The maximum number of dwelling units per acre for garden apartments shall be determined by Schedule III herein.

SCHEDULE III Density Requirements for Garden Apartments

Town of Kearny, New Jersey

<i>Number of Rooms Per Dwelling Unit Exclusive of Kitchen and Bathroom</i>	<i>Minimum Lot Area Per Dwelling Unit (Sq. Ft.)</i>	<i>Maximum Number of Units Per Acre</i>
One, two and three	2,500	17
Four	3,111	14
Five or more	3,630	12

(b) Maximum number of dwelling units per grouping. Each garden apartment building shall not contain more than twelve (12) dwelling units, and in attached buildings not more than thirty-six (36) dwelling units, with no portion of the building below the first story used for dwelling purposes, except that a basement where the floor is not more than three (3) feet below grade may contain living quarters for the building superintendent and his family.

The maximum length of any garden apartment building shall not exceed two hundred (200) feet. The building design shall not be inaccessible by emergency vehicles.

(c) Courts. Where a court is provided, it shall have dimensions the minimum of which shall be thirty (30) feet.

(d) Recreation space. There shall be provided on the site such developmental area or areas of not less than one hundred (100) square feet of recreation space for each dwelling unit but in no case shall there be less than two thousand (2,000) square feet devoted to the joint recreational use of the residents thereof. Such recreation space shall be appropriately located in other than a front yard and shall be required to be developed with passive and/or active recreational facilities.

2. Multiple-Family Dwelling.

(a) Yard requirements. For multiple-family dwellings in an R-3 zone, each side yard shall have a minimum depth as noted in Schedule II, Area, Yard and Bulk Requirements*, or a side yard equal to one-third (1/3) the height of the building wall, whichever is greater but in no case shall the side yard be less than ten (10) feet.

(b) Density requirements. The maximum number of dwelling units per acre for multiple-family dwellings shall be determined by Schedule IV herein.

SCHEDULE IV Density Requirements for Multiple-Family Dwellings

Town of Kearny, New Jersey

<i>Number of Rooms Per Dwelling Unit Exclusive of Kitchen and Bathroom</i>	<i>Minimum Lot Area Per Dwelling Unit (Sq. Ft.)</i>	<i>Number of Units Per Acre</i>
One, two and three	2,000	21
Four	2,420	18
Five or more	2,722	16
Senior Citizen	600	75

3. Standards applicable to garden apartments and multiple-family dwellings.

(a) Distances between buildings. The minimum distance between any two (2) buildings on the same lot having heights of two and one-half (2 1/2) stories or less shall not be less than thirty-five (35) feet. The minimum distance between any two (2) buildings on the same lot where at least one (1) of the buildings has a height of more than two and one-half (2 1/2) stories shall not be less than forty-five (45) feet.

(b) General landscaping. Any unenclosed use or area may be required by the approving authority to be landscaped and provision, when deemed necessary, shall also be made for landscaping in accordance with subsection 38-5.10.

i. *Newspaper or Job Printing.* Newspaper or job printing operations shall be permitted in specified commercial zones subject to the same provisions enumerated in paragraph b. except not more than ten (10) skilled workers or ten (10) rated horsepower shall be permitted.

j. *Restaurants, Eating and Drinking Establishments and Fast-Food Restaurants.*

1. General. Any building or structure designed, used or intended for use as a restaurant or an eating or drinking establishment shall prohibit the sale or consumption of food or beverage within any designated parking area or open space outside of the confines of an enclosed structure on the site, except for designated patio or terrace areas.

2. Fast-Food Restaurants. Any building or structure designed, used, or intended for use as a fast-food restaurant shall meet the following requirements:

- (a) Minimum lot area (square feet)..... 40,000
- (b) Minimum lot width (feet)..... 175
- (c) Minimum front yard (feet)..... 50
- (d) Minimum side yard
 - One (feet) 25
 - Both (feet) 50
- (e) Minimum rear yard (feet)..... 50
- (f) Maximum lot coverage (percent)..... 15
- (g) Maximum improved lot coverage percent..... 75

k. *Townhouse Requirements.* The development of townhouses whether in a fee or other form of ownership shall comply with the additional requirements that are herein noted.

1. No building group shall exceed six (6) dwelling units or one hundred sixty (160) feet, whichever is the lesser.

2. The front building wall shall be minimally offset by five (5) feet at least for every two (2) dwelling units.

3. The side yard setback for an end dwelling unit shall be ten (10) feet. The side yard space between two (2) townhouse structures shall be no less than twenty (20) feet.

4. Each townhouse dwelling shall minimally provide one (1) enclosed parking space.

l. *Reserved.*

m. *Planned Residential Developments.*

1. No Planned Residential Development may be established on a tract of less than seven (7) acres in size.

2. Planned Residential Developments may include townhouses, duplex townhouses and apartments, provided that no more than ten (10%) percent of the total units shall be apartments. In Planned Residential Developments townhouse units may be attached to apartment units by not more than two (2) party walls extending from the foundation to and through the roof. No back-to-back apartment structures shall be permitted in Planned Residential Development Districts, nor shall more than two (2) apartment units be permitted between party walls.

3. The gross density of Planned Residential Developments shall not exceed 18.27 units per acre.

4. A minimum building setback of thirty (30) feet shall be provided from any public street right-of-way line and a minimum building setback of twenty (20) feet from any other property line. No portion of any parking area, aisle or driveway shall be permitted within fifteen (15) feet of a property line. A landscaped buffer area at least fifteen (15) feet in width shall be provided within all tract perimeter setback areas. Along and generally parallel to adjoining public streets such landscaped buffers shall also include a berm not less than five (5) feet in height measured from the unadjusted grade. Any roof overhang or eave not exceeding two (2) feet shall be permitted to encroach into the required perimeter setbacks. Decks or patios may extend into the required perimeter setbacks other than along an adjoining public street, provided the floor elevation is not more than two (2) feet above the finished grade measured at the front edge of the deck or patio, and provided that no portion of such decks or patios are within fifteen (15) feet of a property line.

5. No building within the Planned Residential Development shall exceed a height of thirty-five (35) feet measured from the average finished grade around the base of a building to the mean height of the gable or main roof slope.

6. A minimum of ten (10) feet shall be provided between a building and the curb of an internal private street.

7. A minimum of five (5) feet shall be provided between a building and an off-street parking area except where such space is provided within a driveway or stacked parking space.

8. All internal private streets shall be a minimum of twenty-four (24) feet in width measured from curb to curb. All alleyways shall be a minimum of twenty (20) feet in width.

9. No building shall exceed one hundred ninety (190) feet in length. A minimum offset of two (2) feet shall be provided in the front facade, for at least every fifty (50) feet in length.

10. The following minimum distance between buildings shall be provided.*

- (a) Front to front: 60 feet
- (b) Front to rear: 60 feet
- (c) Front to side: 35 feet
- (d) Rear to rear: 45 feet
- (e) Rear to side: 35 feet
- (f) Side to side: 25 feet

*Note: The rear of the building shall be that side from which vehicular access is provided or which contains enclosed garages or which is closest to the parking area or driveway provided for that building.

In such cases where a pergola, strium or other structure physically connects two (2) buildings and provides a breezeway and private entranceway to the side of a building, such side-to-side distance may be reduced to fifteen (15) feet, provided the overall length of the two (2) buildings and the intervening spaces does not exceed two hundred (200) feet in length.

11. The following minimum number of parking spaces per dwelling unit shall be provided:

	<i>Apartments</i>	<i>Townhouses and Duplex Townhouses</i>
1 bedroom	N/A	1.8
2 bedroom	1.8	2.1
3 bedroom	N/A	2.4

12. All parking spaces within enclosed garages shall be counted for the purposes of meeting required parking on-site. All driveway spaces which are a minimum of nine (9) feet wide by twenty (20) feet in length shall also be counted as one (1) space towards meeting the required parking on-site. All other parking spaces other than driveway spaces shall be nine (9) feet wide by eighteen (18) feet in length, provided an overhang of two (2) feet is provided, otherwise the required dimension shall be nine (9) feet wide by twenty (20) feet in length. The provisions of subsection 38-7.6e shall not apply to Planned Residential Developments.

13. A minimum recreation area of thirty (30) square feet per unit shall be set aside for recreation. Such recreation area or areas shall provide for active recreation such as play equipment or tot lots, and passive recreation such as sitting areas. However, there shall be at least one (1) tot lot provided on-site. Such recreation areas may be provided in one (1) or more areas, provided that each is no less than one thousand six hundred (1,600) square feet in size.

14. No sidewalks shall be required. However, walkways which shall not consist of macadam, shall be provided to facilitate pedestrian movement on-site.

15. Mountable curbs shall be provided along all internal private streets.

16. No concrete block or asphalt shingle shall be permitted as a finish material for any building, except that asphalt shingle may be used for roofs. In Planned Residential Developments, all structures shall have the appearance of attached townhouse units.

17. All open spaces not covered by impervious surfaces shall be planted with grass or landscaping material.

18. The developer of a Planned Residential Development shall be required to either provide twenty (20%) percent of the total units in the development for families of low and moderate income or to contribute to the Affordable Housing Trust Fund a cash payment of twelve thousand (\$12,000.00) dollars per unit for twenty (20%) percent of the total units in the development, in lieu of not being required to provide units affordable to low and moderate income families on-site.

Where a developer chooses to provide low and moderate income units on-site, the units shall be built in accordance with the following schedule:

<i>Minimum Percentage of Low and Moderate Income Units Completed</i>	<i>Percentage of Market Housing Units Completed</i>
0	25
10	25 + 1 unit
50	50
75	75
100	90
	100

Where a developer chooses to provide an in-lieu-of-cash payment, one-third (1/3) of the total payment due shall be payable upon the issuance of the first building permit with the balance to be paid pro rata on the issuance of the certificates of occupancy for the remaining units. Payment shall be simultaneous to the issuance of the building permit and certificates of occupancy.

n. *CLH Conventional and Limited Income Housing*. District. The CLH Zone is designed for and permits conventional residential development in combination with limited income housing (LIH) as well as accessory uses and conditional uses as permitted and regulated in the R-1 One-Family Residential Zone, CLH developments all meet the following criteria.

1. Minimum Lot Area. No CLH development shall be established on a lot with an area of less than three (3) acres.

2. Intensity of Development. The maximum gross density of any tract inclusive of conventional housing and LIH units shall not exceed fourteen (14) dwelling units per acre, provided, that any development in the CLH Zone shall provide for LIH at the rate of two and eight tenth (2.8) dwelling units per acre.

3. Housing Types. Conventional and limited income housing may consist of townhouses, duplex townhouses and apartments arranged and sited in a fashion approved by the Planning Board.

4. Required Conditions. The following requirements must be complied with in the CLH Conventional and Limited Income Housing District.

(a) Setbacks. A minimum building setback of thirty (30) feet shall be provided from any street right-of-way or other property line. No portion of any parking area, parking aisle, driveway or internal roadway other than street access ramp shall be permitted within fifteen (15) feet of any street right-of-way or other property line. A landscaped buffer area at least fifteen (15) feet in width shall be provided within all perimeter setback areas. Such landscaped buffers may, at the discretion of the Planning Board also be required to include a berm not less than five (5) feet in height measured from the unadjusted grade.

(b) Building height. No building shall exceed a height of forty (40) feet measured from the average finished grade around the base of the building to the mean height of the gable or main roof slope.

(c) Distances. A minimum distance of fifteen (15) feet shall be maintained between any building and the curblines of an internal private roadway. A minimum distance of ten (10) feet shall be maintained between any building and an off-street parking area other than a driveway accessing an individual enclosed garage.

Distances between buildings shall be maintained in the following manner:

Front-to-front perimeter wall	60 feet
Front-to-rear perimeter wall	60 feet
Rear-to-rear perimeter wall	60 feet
Front-to-side perimeter wall	40 feet
Rear-to-side perimeter wall	40 feet
Side-to-side perimeter wall	30 feet

(d) Roadways and driveways. All internal private roadways shall have a width of at least twenty-four (24) feet measured between curbs. Single driveways and double driveways accessing individual garages shall have widths of not less than eleven (11) feet or twenty-two (22) feet respectively. Internal private roadways parking areas and driveways shall be curbed along their entire lengths.

(e) Parking. The minimum number of off-street parking spaces provided shall be according to the following schedule:

<i>Unit Size</i>	<i>Apartments</i>	<i>Townhouses and Duplex Townhouses</i>
One bedroom	1.5 spaces	1.8 spaces
Two bedroom	1.8 spaces	2.1 spaces
Three bedroom	2.0 spaces	2.4 spaces
Four bedroom or larger	2.2 spaces	2.6 spaces

All parking spaces provided within enclosed garages may be counted for the purpose of satisfying off-street parking requirements. Single or double driveways accessing individual garages with lengths of at least twenty-five (25) feet measured between the curblines of a private internal roadway and an individual garage may also be counted as single or double parking spaces respectively, for the purpose of meeting off-street parking requirements.

Each off-street parking space, other than within a driveway, shall be a suitably improved rectangular area of not less than one hundred eighty (180) square feet, shall be a minimum of nine (9) feet in width measured perpendicular to the axis of the length, and shall have a minimum depth of twenty (20) feet. Whenever a parking space abuts along its length an obstruction more than six (6) inches high the minimum width of the parking space shall be twelve (12) feet. All parking spaces shall be provided with adequate means of ingress and egress which shall be kept open and unobstructed at all times and which shall be designed to provide surface driveways or aisles to meet the following minimum standards:

<i>Parking Plan</i>	<i>Aisle Width</i>
Parallel parking on one side only (1 way)	12 feet
Parallel parking on one side only (2 way)	24 feet
30° angle parking (aisle one-way)	11 feet
30° angle parking (aisle two-way)	24 feet
45° angle parking (aisle one-way)	13 feet
45° angle parking (aisle two-way)	24 feet
60° angle parking (aisle one-way)	18 feet
60° angle parking (aisle two-way)	24 feet
90° angle parking (aisle one or two-way)	24 feet

If approved by the Planning Board, two (2) feet of the twenty (20) feet minimum length requirement may be satisfied by vehicular overhang over a landscaped area which is protected by curbing.

(f) Recreation and landscaped areas. Suitably improved recreation areas totaling at least fifty (50) square feet per dwelling unit shall be provided within the site. Such recreation areas may be sited at one (1) or more locations provided that no such area shall encroach into a required perimeter buffer area and that at least one such recreation area measures not less than two thousand (2,000) square feet. All open

spaces not covered by impervious surfaces shall be planted with lawn and landscape material according to a plan approved by the Planning Board.

(g) Rooms and minimum floor areas. Any room other than living room, dining room, kitchen, bathroom, laundry room, utility room, foyer or hallway shall be construed as a bedroom, and every unit shall have at least one (1) bedroom. At least fifty (50%) percent of the residential units shall have more than one (1) bedroom, provided, however, that at least ten (10%) percent of the residential units shall have more than two (2) bedrooms. Minimum floor areas shall be as follows: one (1) bedroom unit, five hundred forty (540) square feet; two (2) bedroom units, seven hundred fifty (750) square feet; three (3) bedroom units, nine hundred (900) square feet. The bedroom mix for the low income and the moderate income household units shall be substantially similar.

(h) Facilities. Each residential unit shall contain, as a minimum, a separate living room, a separate bedroom, a separate bath, storage area, utilities, a separate kitchen, which kitchen facility shall be located separate and apart from other rooms in the unit with the exception of the dining room.

(i) Architecture and construction. The architecture employed shall be aesthetically congruous with the surrounding area as approved by the Planning Board. All buildings shall be constructed in accordance with the State Uniform Construction Code and shall comply with all other applicable municipal or State requirements.

(1) No building shall exceed one hundred eighty (180) feet in length. A minimum offset of two (2) feet shall be provided in the front and rear perimeter wall for at least every fifty (50) feet in length.

(2) All exteriors of perimeter walls of dwelling structures shall be of wood, brick, stone or other accepted durable material, provided, however, that asbestos shingle or cinder block as an exterior finish is prohibited.

(3) The exterior of any accessory structures shall harmonize architecturally with and be constructed of materials of a like character to those used in principal structures.

5. All sales or rentals of LIH units shall be in accordance with the eligibility and other requirements and regulations contained in this chapter.

6. Required LIH shall be constructed concurrently and in proportion with the conventional units built. To assure compliance with this requirement, after the issuance of certificates of occupancy for twenty-five (25%) percent of the conventional housing units, the following schedule shall be complied with:

<i>Minimum Percentage of Low and Moderate Income Units Complete</i>	<i>Percentage of Conventional Housing Units Complete</i>
0	25
10	25 + 1 unit
50	50

75
100

75
90
100

Nothing contained herein shall preclude the applicant from construction LIH units prior to the construction of conventional units as provided in the foregoing schedule.

At every stage of the development not less than fifty (50%) percent of the LIH units shall be made available exclusively to low income households.

7. Notwithstanding requirements of this or any other ordinance of the Town of Kearny concerning fees, the Town of Kearny shall waive the following fees otherwise due in connection with LIH portions of a development:

- (a) Subdivision and/or site plan application fees as applicable;
- (b) Construction permit fees, except State and third party fees not waived;
- (c) Fees for certificates of occupancy; and
- (d) Any utility connection fees otherwise due to the Town of Kearny.

8. Prior to the approval of any development in the CLH Zone, the Planning Board shall have approved development plans verifying compliance with the purposes of this section and all the requirements established in this chapter. The information submitted in this regard shall include but not be limited to:

- (a) Environmental impact study;
- (b) All property boundary, topographic and soil information and other applicable details required in connection with preliminary plats;
- (c) Building floor plans and elevations for all structures;
- (d) Area lighting data, provisions for trash, garbage and refuse disposal, landscaping plans and utility information;
- (e) Deed restrictions, covenants or other suitable instruments designed to implement plans and requirements as well as in connection with eligibility for purchase and rental of conventional and LIH to be provided as part of the development.

(Ord. No. 10-14-87 § 138-6.100; Ord. No. 6-27-90; Ord. No. 12-12-90; Ord. No. 4-24-91; Ord. No. 1999-O-2 §§ 22–25; Ord. No. 2006-(O)-55A § 1)

38-6.2 Accessory Uses in Residential Zones.

a. Accessory structures which are not attached to a principal structure may be erected in a required side yard setback or within the rear yard, except on the street side of a corner lot provided that:

- 1. Accessory structures shall not be located closer than three (3) feet to any lot line.
- 2. No accessory structure is located closer to the street right-of-way than the required front yard setback of the principal structure. Subsections 38-5.1c and 38-5.3d shall also apply to all accessory structures hereunder.

3. Portable sheds having no foundations and with a footprint of less than one hundred (100) square feet in area shall not be counted as contributing to impervious lot coverage or lot coverage provided such a shed is located in the rear or side yard, is set back at least three (3) feet from the closest property line, and there is no more than one (1) portable shed.

b. *Attached Accessory Structures in Residential Districts.* When an accessory structure is attached to the principal building, it shall comply in all respects with the requirements of this chapter applicable to the principal building.

c. *Permanent Swimming Pools.*

1. Inground or aboveground swimming pools accessory to a residential use shall be erected on the same zone lot as the principal structure. Said pools may be erected in the side or rear yard of the zone lot. Inground swimming pools shall be located no closer than six (6) feet to a side or rear property line. A minimum of a two (2) foot buffer shall exist between the property line and the pool improved area. The wall of an aboveground swimming pool and any associated decking shall be located no closer than three (3) feet to a side or rear yard line. Such pools and associated decking shall not be counted as contributing to improved lot coverage. Where a pool is located on a corner lot, the fencing closest to the right-of-way and along the rear property line shall be solid so as to provide a visual screen.

d. *Residential Signs.* Signs permitted within residential districts shall be in accordance with subsection 38-6.8.

e. *Home Occupations.* Home occupations shall comply with the following requirements:

1. Such use is clearly accessory to the principal use of the structure.

2. Such home occupation is conducted by the resident of the premises or member of his immediate family residing on the premises.

3. Such home occupation shall not use more than one-third (1/3) of the total floor area of the dwelling unit or seven hundred fifty (750) square feet, whichever is less.

4. Not more than one (1) nonresident employee may be permitted.

5. Such use shall be conducted solely within the principal structure.

6. One (1) sign, not exceeding seven (7) inches by eighteen (18) inches, shall be permitted indicating the name and home occupation of the occupant.

7. There shall be no change in the outside appearance of the building or premises which would alter its residential character.

8. No use shall generate traffic, parking, noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than what normally occurs in the applicable zoning district.

9. Not more than three (3) customers or clients shall be present at the same time.

10. Teaching occupations of a tutoring nature shall be permitted provided that there shall be no more than three (3) pupils in attendance at the same time.

11. Such uses shall not result in the outside storage or display of any materials.
12. The use shall be only in a single family or two (2) family dwelling.
13. Where the general public is to be received, off-street parking spaces shall be provided in addition to required spaces for the residential use according to the following schedule:

Total floor area up to five hundred (500) square feet:

One (1) additional space

Total floor area more than five hundred (500) square feet:

Two (2) additional spaces

Permitted home occupations shall not in any event be deemed to include barber shops, beauty parlors, massage parlors, tattoo parlors, clinics, child day care centers (except family day care homes as permitted in N.J.S.A. 40:55D-66.5b.), day nurseries, dancing schools, ceramic kilns, real estate offices, auto repair (or auto repossession), the sale or repair of firearms, restaurants, animal hospitals, fortune telling, palmists, limousine services, or repair shops except for the repair of electrical appliances, cameras or other small items.

f. *Fences.* Fences permitted in residential districts shall be in accordance with subsection 38-6.9. (Ord. No. 10-14-87 § 138-6.200; Ord. No. 6-8-83; Ord. No. 6-22-83; Ord. No. 1999-O-2 §§ 33, 34, 38; Ord. No. 2005-(O)-42 § 5)

38-6.3 Accessory Uses in Nonresidential Zone.

- a. In any nonresidential district, no accessory structure or use shall be located closer to any lot line than five (5) feet.
- b. In any nonresidential district, the aggregate area covered by accessory structures shall not exceed twenty-five (25%) percent of the rear yard.
- c. In any nonresidential district, all accessory structures shall be located no less than ten (10) feet from the side or rear of the principal or main building.
- d. In any nonresidential district, no accessory structure shall be located closer to the street right-of-way line than the required front yard setback of the principal structure. The requirements of subsections 38-5.1c and 38-5.3d shall also apply to all accessory structures hereunder.
- e. When an accessory structure is attached to the principal building in all nonresidential districts, it shall comply in all respects with the requirements of this chapter applicable to the principal buildings.
- f. No portion of an accessory structure in any nonresidential district shall be used for living quarters.
- g. Signs identifying or advertising a use conducted on the premises, a canopy or a marquee, shall be subject to subsection 38-6.8.

h. The open display or storage for sale of used or new motor vehicles shall be subject to the requirements of the Town of Kearny licensing and regulating such business.

i. The open storage of machinery or contractors' equipment as a permitted principal use shall be prohibited in all C Districts except as may be authorized by the Board of Adjustment by a temporary permit not exceeding sixty (60) days.

j. Fences in any nonresidential district shall be subject to the regulations in subsection 38-6.9.

k. All operations, activities and storage (except off-street parking including trucks, tractors, trailers or similar vehicles and unloading/loading, accessory lumberyards and home improvement centers), shall be conducted in completely enclosed buildings.

(Ord. No. 10-14-87 § 138-6.220; Ord. No. 2004-(O)-64; Ord. No. 2007-(O)-17 § 1; Ord. No. 2008-(O)-04 § 1)

38-6.4 - 38-6.5 Reserved.

38-6.6 Conditional Uses.

a. Conditional uses as enumerated in Schedule I* shall be permitted only upon authorization by the approving authority, provided that such uses shall be found by the approving authority to comply with the following requirements as set forth in this chapter.

1. That the use is a conditional use as set forth in Schedule I* thereof.

2. That the use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected.

3. That the use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.

4. That the use will be compatible with adjoining development and the proposed character of the zone district where it is to be located.

5. That adequate landscaping and screening are provided as required by Town Ordinance.

6. That adequate off-street parking and loading are provided and ingress and egress is so designed as to cause minimum interference with traffic on abutting streets.

7. That the use conforms with all applicable regulations governing the district where located.

b. *Animal Hospitals and Kennels.* Animal hospitals and kennels shall be located no closer than fifty (50) feet to any residential zone line. Such facilities shall be maintained in an enclosed structure and shall be of soundproof construction and so operated as to produce no objectionable odors at the zone lot boundary line. Open kennels, exercise pens or runways shall not be located closer than one hundred (100) feet to any property line and shall be subject to noise and odor controls.

c. *Automobile Washing Establishments.* All automobile washing establishments shall comply with the following requirements:

1. Minimum Area Requirements:
 - (a) Minimum lot area..... 30,000 square feet
 - (b) Minimum lot width100 feet
2. Minimum Yard Requirements:
 - (a) Front yard.....40 feet
 - (b) Side yards
 - (1) (a) One.....30 feet
 - (2) (b) Both60 feet
 - (c) Rear yard.....60 feet
3. Maximum Bulk Requirements:
 - (a) Maximum building height.....30 feet
 - (b) Maximum lot coverage40 feet
 - (c) Maximum improved lot coverage.....85 feet

4. Location. Such establishments shall not be located closer than one hundred (100) feet to any residential zone boundary line, school, hospital, nursing home or other similar institutional or public use.

5. Off-Street Parking. Such establishments shall provide a reservoir parking area equal in number to seven (7) times the maximum capacity of the laundry for automobiles awaiting entrance to the premises and one and one-half (1 1/2) times the maximum capacity of the laundry for automobiles beyond the exit end of the equipment so situated as to be usable for hand-finishing of the washing process and which shall be no closer than twenty (20) feet to any street right-of-way line. "Maximum capacity" in this instance shall mean the greatest possible number of automobiles undergoing some phase of laundering at the same time, which shall be determined by dividing the equipment line by twenty (20) feet.

6. Landscaping. Such establishments shall comply in all respects with the landscaping and buffer zone requirements for side and rear yards as established in subsection 38-5.10.

d. *Reserved.*

e. *Clubs, Lodges, Social and Community Center Buildings.*

1. All buildings shall be a minimum of ten (10) feet from any side property line and shall meet all other setback requirements of the district in which it is located.

2. Retail sales may be included for members and their guests only.

3. On-site parking shall be provided in the amount of at least one (1) space for each three (3) persons based on the maximum occupancy permitted by the Uniform Construction Code in the largest assembly area.

f. *Essential Services.*

1. Enclosed or Permanent Structures.

(a) Public utility services. Such uses shall include electric substations, transformers, switches and auxiliary apparatus serving a distribution area, and water pumping station in R Districts and shall be subject to the following regulations:

(1) Such facility shall not be located on a residential street, unless no other site is available, and be so located as to draw a minimum of vehicular traffic to and through such street.

(2) The location, design and operation of such facility may not adversely affect the character of the surrounding residential area.

(3) Adequate fences, barriers and other safety devices shall be provided, and shall be landscaped in accordance with subsection 38-5.10.

2. Open Uses and Structures.

(a) Such uses shall be limited to the erection, construction, alteration or maintenance, by public utilities or municipal or other governmental agencies, of underground or overhead electrical, gas, water transmission or distribution systems or collection, communication supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith reasonably necessary for the furnishing of adequate services by such public utilities or municipal or other governmental agencies or for the public health, health or general welfare, but not including buildings. Open essential services shall not include any human or animal fecal matter or material.

(b) Landscaping requirements established in subsection 38-5.8 shall be adhered to.

g. *Mixed Residential Uses.*

1. The commercial use shall be in combination with dwellings for one (1) or two (2) families or in combination with multiple-family dwellings for not more than twelve (12) families.

2. The residential uses shall front upon an existing street or have direct access to the street uninterrupted by structures or off-street parking areas.

3. Business uses shall be limited to the following:

(a) Retail stores where goods are sold or services rendered and where nothing is fabricated, manufactured, converted or altered except for such retail trade.

(b) Financial institutions.

- (c) A central telephone exchange and accessory business uses.
- (d) Business and professional offices.
- (e) Restaurants and lunch counters, except fast-food restaurants.
- (f) Funeral homes and funeral parlors.

h. *Outdoor Storage Areas.* Such uses, where permitted, shall not abut existing residential development, a residential street or any R District and the operation thereof shall be governed by the following provisions:

1. *Inflammable and Explosive Substances.* All inflammable or explosive liquids, solids, or gases shall be stored in appropriate containers as regulated in the Town Fire Prevention Code.

2. *Fencing and Landscaping.* All outdoor storage facilities shall be enclosed by a fence or wall adequate to conceal such facilities and the contents thereof from adjacent property and subject to the provisions of subsection 38-5.10.

3. *Deposit of Wastes.* No material or waste which might cause fumes or dust or which might constitute a fire hazard or which may be edible by or otherwise be attractive to animals or insects and shall be stored outdoors only in closed containers.

i. *Outdoor Uses.* All operations, activities and storage shall be conducted within completely enclosed buildings in both the SKI-N and SKI-S zones, except that the outdoor storage of containers, off-street parking including trucks, tractors, trailers or similar vehicles and unloading/loading, accessory lumber yards and home improvement centers may be permitted in the SKI-N Zone only and only if they shall comply with the following requirements:

- 1. There shall be a 10-foot wide landscaped buffer along all property lines;
- 2. All uses shall be subject to subsection 38-6.6h.;
- 3. All uses shall be paved and curbed in accordance with the Design Standard as set forth in Section 36-12.

j. *Service Stations.*

1. *Location of Exits and Entrances.* No gas station, or vehicular repair service shop shall be located within two hundred (200) feet measured along the street line on the same or opposite side of the street of the following uses:

Public or private schools, playgrounds, churches, theaters, fire stations, hospitals, public libraries, orphanage or children's home housing children under sixteen (16) years of age, or other public gathering place or to any street entrance to such buildings or public gathering place.

Vehicular access to the above uses shall not be closer to the intersection of any two (2) street lot lines than fifty (50) feet, nor shall any such use be located within twenty-five (25) feet of any boundary line of any R District.

2. *Location of Appliances and Buildings.* Service stations shall have their gasoline pumps, including other service facilities, set back at least fifteen (15) feet from any street

line and their buildings set back at least thirty (30) feet from any street line. This provision does not apply to gasoline pumps and other service facilities within public garages.

3. Landscaping Requirements. The provisions of subsection 38-5.10 shall also be complied with.

4. Proximity to Other Service Stations. A service station shall not be located within one thousand (1,000) feet of another service station.

5. Lot Size. The minimum lot size for all service stations shall be ten thousand (10,000) square feet. The least dimensions shall be one hundred (100) feet by one hundred (100) feet.

6. Type of Construction. All buildings constructed for use in connection with such station shall be of masonry construction. Any grease pits or hoists shall be contained within the area of the building.

7. Type of Repairs. Repair services shall be limited to mechanical repairs and shall not include auto body repair work or painting.

8. As an accessory use, no automobile service station shall contain more than two (2) vehicles offered for sale at any one time and in no case shall such vehicles occupy unpaved portions of the property nor shall such vehicles occupy space needed to comply with the minimum required amount of on-site parking for the principal use.

k. *Warehouses, Commercial and Industrial.* A commercial or industrial warehouse shall be subject to the following provisions in regard to items stored in bulk:

1. The storage in bulk of hazardous chemical, including, but not limited to, flammable solids, as defined in the Town of Kearny Fire Prevention Code of the Town of Kearny, shall be safeguarded with such protective facilities as public safety requires.

2. The Construction Official, on the advice of the Chief of the Bureau of Combustibles, may require the separation or isolation of such substances from other storage facilities, dwellings, places of assembly, educational occupancies, railroads and public highways, when the quantity stored constitutes a material hazard to the surrounding area. Limitations on storage quantities shall be considered with regard to proximity to these exposures to all zone districts.

3. Oxidizing materials that have a severe fire hazard and which are likely to deflagrate on exposure to fire, shock or friction, but which are not likely to detonate shall be segregated or isolated in storage. Segregation shall be by walls having a fire-resistance rating of not less than two (2) hours. Automatic sprinklers shall be provided where the building is not adequately isolated.

1. *Private Day School Operated for Profit.* Except for pre-school nursery facilities, a private day school operated for profit shall meet all of the construction and safety requirements of the New Jersey Department of Education, whether or not the facility comes under the jurisdiction of the Department. A private day school shall minimally provide a land area equal to three (3) acres plus one (1) acre for each and every one hundred (100) students in attendance. Parking requirements established in the Kearny Subdivision and Site Plan Ordinance shall be complied with.

m. *Abandoned Vehicles.* The storage of unregistered and/or unlicensed motor vehicles shall be prohibited in all districts except in connection with state licensed auto dealerships and scrap metal dealers which possess a valid Certificate of Occupancy from the Town of Kearny.

n. *Wireless Telecommunications Equipment.*

1. Exemptions of Applicability. The provisions of this subchapter shall not apply to the following:

(a) Any tower, or the installation of any antenna, that is under seventy (70) feet in height and is owned and operated only by a federally licensed amateur radio station operator or is used exclusively to receive transmissions;

(b) Preexisting towers or antennas shall not be required to meet the requirements of this paragraph, except that in the case of enlargement, structural modification or addition to any existing tower or antenna facility which shall result in an increase of ten (10%) percent or more in tower height or facility floor area the provisions of this ordinance shall apply; and

(c) The provisions of this subsection shall not govern any parabolic satellite antennas.

2. Overall Comprehensive Plan.

(a) Any applicant to the Town for approval to erect a wireless telecommunications antenna, in addition to all other information required by this ordinance, shall provide to the approving authority substantial evidence that the proposed location of the proposed antenna(s), and any proposed supporting tower and/or ancillary cabinets or structures enclosing related electronic equipment, have been planned to result in the lowest number of tower locations within the Town and the least possible impact on community aesthetics.

(b) The applicant shall provide an overall comprehensive plan indicating how it intends to provide full service throughout the Town and, to the greatest extent reasonably possible, shall indicate how its plan specifically relates to and is coordinated with the needs of all other providers of wireless telecommunications services within and around the municipality.

(c) The overall comprehensive plan shall indicate the following:

(1) The mapped location and written description of all existing antennas and existing and approved supporting structures within one (1) mile of the subject site;

(2) The mapped location and written description of all existing or approved water towers and existing telephone or electric towers within one (1) mile of the subject site;

(3) How the proposed location of the proposed antenna(s) specifically relates to the suitability or unsuitability of such existing structures to be utilized to provide the intended wireless communication;

(4) How the proposed location of the proposed antenna(s) specifically relates to the anticipated need for additional antennas and supporting structures within and near the Town by the application and by other providers of wireless communications services within the Town;

(5) How the proposed location of the proposed antenna(s) specifically relates to the overall objective of providing full wireless communication services within the Town while, at the same time, limiting the number of supporting towers to the fewest possible through the use of co-location, through the use of alternate technologies which do not require the use of towers, or through the use of existing structures; and

(6) How the proposed location of the proposed antenna(s) specifically relates to the objective of minimizing the impact of the antennas, accessory equipment, and supporting structures on residences, streetscapes, and view corridors throughout the municipality.

3. Location Priorities. Based upon the "Overall Comprehensive Plan" submitted by the applicant, if the Town determines the proposed antenna(s) are needed for the provision of full wireless telecommunications services within the Town, utilizing the fewest number of towers as reasonably possible and locating on existing structures where reasonably possible, the following priority schedule shall apply:

(a) Wireless telecommunication antennas shall be permitted as principal uses on existing structures at the following prioritized locations:

(1) The first priority location shall be the co-location of an antenna on an existing tower with the SKM* Zone;

(2) The second priority location shall be the location of an antenna on an existing building within the SKM* Zone.

(3) Co-location on a tower shall be required for no less than three (3) carriers and a letter of intent by the applicant to meet the co-location requirement shall be provided to the approving authority; and

(4) All of the separation distance, area, setback, height, and design criteria requirements listed herein shall be met.

(b) Wireless telecommunications antennas shall be permitted as accessory uses on existing structures at the following prioritized locations:

(1) The third priority location shall be the co-location of an antenna on an existing tower within the M Zone;

(2) The fourth priority location shall be the location of an antenna on an existing building within the M Zone;

(3) The fifth priority location shall be the co-location of an antenna on an existing tower within the LI Zone;

(4) The sixth priority location shall be the location of an antenna on an existing building within the LI Zone;

(5) Co-location on a tower shall be required for no less than three (3) carriers and a letter of intent by the applicant to meet the co-location requirement shall be provided to the approving authority; and

(6) All of the separation distance, area, setback, height, and design criteria requirements listed herein shall be met.

(c) Wireless telecommunications antennas shall be permitted as conditional uses on existing structures at the following prioritized locations:

(1) The location of an antenna on an existing building within the C-4 Zone shall be considered seventh in the list of priority locations;

(2) The location of an antenna on an existing building within the C-3 Zone shall be considered eighth in the list of priority locations;

(3) The location of an antenna on an existing building within the C-2 Zone shall be considered ninth in the list of priority locations;

(4) The location of an antenna on an existing building within the C-1 Zone shall be considered tenth in the list of priority locations;

(5) The location of an antenna on an existing building within the Redevelopment Zone shall be considered eleventh in the list of priority locations;

(6) The location of antenna on an existing building within the R-3 Zone shall be considered twelfth in the list of priority locations;

(d) New wireless telecommunications towers, along with the antennas and equipment facilities associated with such new towers, shall be permitted as principal uses in the following prioritized locations:

(1) The location of a new tower within the SKM* Zone shall be considered thirteenth in the list of priority locations;

(2) Co-location on a tower shall be required for no less than three (3) carriers and a letter of intent by the applicant to meet the co-location requirement shall be provided to the approving authority; and

(3) All of the separation distance, area, setback, height, and design criteria requirements listed herein shall be met.

(e) New wireless telecommunications towers, along with the antennas and equipment facilities associated with such new towers, shall be permitted as accessory uses in the following prioritized locations:

(1) The location of a new tower within the M Zone shall be considered fourteenth in the list of priority locations;

(2) The location of a new tower within the LI Zone shall be considered fifteenth in the list of priority locations;

(3) Co-location on a tower shall be required for no less than three (3) carriers and a letter of intent by the applicant to meet the co-location requirement shall be provided to the approving authority; and

(4) All of the separation distance, area, setback, height, and design criteria requirements listed herein shall be met.

(f) No wireless telecommunications antennas shall be permitted on any billboard.

4. Separation Distance Requirements. The following separation distance requirements shall apply:

(a) If the proposed antenna(s) will be attached to an existing building, the following separation distance requirements shall apply:

(1) Minimum distance between facilities in residential districts or a residential portion of a duly adopted redevelopment area: five hundred (500) feet;

(2) Minimum distance between facilities located in commercial districts: three hundred (300) feet;

(3) Minimum distance between facilities located in industrial or manufacturing districts: two hundred (200) feet.

(b) If the proposed antenna(s) will be attached to an existing wireless telecommunications tower or similar structure within an industrial district, the following separation distance requirements shall apply:

(1) Minimum distance from any residential district line: seven hundred fifty (750) feet;

(2) Minimum distance between facilities: seven hundred fifty (750) feet.

(c) If the proposed antenna(s) will be supported by a new wireless telecommunications tower:

(1) Minimum distance from any residential district line: one thousand (1,000) feet;

(2) Minimum distance between facilities: one thousand five hundred (1,500) feet.

5. Area and Setback Requirements.

(a) If the proposed antenna(s) are to be attached to an existing building or an existing or approved tower or structure, no land area shall be required in addition to the land area upon which the existing structure is situated; or

(b) If the proposed antenna(s) are to be supported by a new wireless telecommunications tower:

(1) The proposed antenna(s) and proposed supporting tower and ancillary related electronic equipment shall be located on a land area equal to or larger than one-third (1/3) the minimum lot area specified for the District;

(2) The minimum required land area shall either be a separate undeveloped lot or a leased portion of an already developed lot;

(3) The proposed antenna(s) and proposed supporting tower and ancillary related electronic equipment and any approved building housing the electronic equipment and any approved camouflaging of the tower shall be the only land uses located on the proposed tower site, whether a separate lot or a leased portion of a lot; and

(4) Excepting for any access driveway into the property, any required landscaping, and any underground utility lines reviewed and approved by the approving authority as part of the site plan submission, no building structure and/or disturbance of land shall be permitted within one hundred (100) feet from any street line, from any other existing or proposed property line, or from any "lease line," provided that if a tower will exceed one hundred (100) feet in height, the tower shall be set back from any street line and from any other existing or proposed property line a distance equal to or greater than the height of the tower, except that, in any case the tower shall be required to be set back a minimum distance of only one hundred (100) feet from any line demarcating the leased premises.

6. Maximum Height.

(a) The maximum height of any proposed antenna extending above any existing building or existing structure shall be the minimum height necessary for the proposed installation to satisfactorily operate;

(b) The height of any proposed new supporting tower shall not exceed one hundred fifty (150) feet unless it can be demonstrated by the applicant, to the satisfaction of the approving authority, that a higher height is necessary for the proposed installation of the antenna(s) to satisfactorily operate and is necessary for the co-location of at least three (3) other carriers on the tower; and

(c) The maximum height of any proposed rooftop equipment cabinet shall be the height of the tallest accessory rooftop structure such as a stair or elevator housing, provided that no equipment cabinet shall be located on the rooftop of any building less than sixty (60) feet in height.

7. Design Criteria. All applications for wireless telecommunications antennas shall adhere to the following design criteria:

(a) For location on an existing building or structure:

(1) Minor site plan application to the approving authority shall be required.

(2) To the greatest extent possible, any antenna(s) located on an existing building shall be surface-mounted on the building façade at the roofline or along

the exterior parapet wall so as to reasonably blend in with the architectural features of the building.

(3) Antenna(s) and supporting electrical and mechanical equipment shall be constructed of materials and styles consistent with surrounding street and building design and shall be of a color that matches, as closely as possible, the background color of the façade on which it is mounted or so as to make the antenna(s) and related equipment as visually unobtrusive as possible.

(4) All ancillary electronic and mechanical equipment shall be housed either within an enclosed area inside the existing building or on the rooftop of the building, provided:

[a] The height of the rooftop equipment facilities shall not exceed the height of the tallest accessory rooftop structure such as a stair or elevator housing nor more than two hundred fifty (250) square feet in area and shall be fully enclosed in a cabinet which shall be constructed of a material and color which will match those of the existing rooftop accessory structures as closely as possible; and

[b] Documentation by a qualified expert that any existing structure will have sufficient structural integrity to support the proposed antennas and ancillary equipment shall be provided to the approving authority.

(5) Any additional public utility lines and/or cables deemed necessary for the operating of the proposed antenna facility shall be located underground. The applicant shall provide documentation to the approving authority as to the necessity of the additional lines, including a detailed schematic of specific location(s) and area(s) to be disturbed in order to accomplish the installation of the lines and/or cables. Applicant shall be responsible for compliance with any and all applicable Federal, State, or local regulations, including the specific provisions of the Town's road opening permit requirements.

(6) No signage shall be permitted that is visible from adjacent properties or from the public right-of-way.

(b) For a new tower:

(1) Preliminary and final site plan applications shall be required for any proposed new wireless telecommunications tower.

(2) Any proposed new tower shall be a monopole unless the applicant can demonstrate, and the approving authority agrees, that a different type of pole is necessary for the co-location of additional antennas on the tower.

(3) Unless otherwise required by the Federal Aviation Administration (FAA) or the Federal Communications Commission (FCC), all tower designs shall be integrated with the surrounding street and building design and shall be either constructed of a neutral colored material or painted a neutral color so as to reduce the visual obtrusiveness. All applicable FAA or FCC standards regarding color

materials that may apply to the proposed tower shall be provided to the approving authority.

(4) No lighting is permitted on a tower except lighting that is specifically required by the FAA and any such required lighting shall be focused and shielded, to the greatest extent possible, so as not to project toward adjacent nearby properties. All applicable FAA standards regarding lighting that may apply to the proposed towers shall be provided to the approving authority.

(5) All ancillary electronic and other equipment shall be located within a building or encircled structure which structure shall meet the following design criteria:

[a] Each provider or wireless telecommunications services located on the site may have a maximum of one (1) cabinet enclosing required electronic equipment, which cabinet shall not exceed fifteen (15) feet in height nor more than two hundred fifty (250) square feet in area. All such cabinets shall be located within a building which shall not exceed one and one-half (1 1/2) stories and twenty (20) feet in height nor one thousand (1,000) gross square feet in area.

[b] The building shall use materials, textures, and colors that together with required screening and landscaping shall cause it to blend into the natural setting and surroundings, to the greatest extent possible.

[c] Provision for co-location of equipment shall be incorporated into the design of the building/structure.

[d] No electronic equipment shall be designed in such a way as to interfere with any public safety communication.

[e] All equipment shall be automated so that, to the greatest extent possible, the need for on-site maintenance and associated vehicular trips to and from the site will be minimized.

[f] Lighting shall be limited to a single light at the entrance to the building which shall be focused downward.

(6) Landscaping shall be provided between the tower and also between any building or structure used to house ancillary equipment and any public street or residential dwelling unit or residential zoning district in accordance with the following:

[a] Required landscaping shall consist of sufficient density of evergreen planting to effectively screen the view of the tower's base and, in addition, sufficient other plantings which may consist of a combination of shrubs and deciduous trees to screen the tower and enhance the appearance of, to the maximum extent reasonably possible, from any surrounding residential properties and from any public street.

[b] Any newly planted evergreen tree shall be at least eight (8) feet high at the time of planting and any newly planted deciduous trees shall be a minimum caliper of three and one-half (3.5) inches at the time of planting.

[c] No signage shall be permitted except "warning" and/or equipment information signs as deemed necessary or as required by State and/or Federal regulatory agencies for safety purposes and are specifically approved by the approving authority.

(7) Minimal off-street parking shall be permitted as needed to provide maintenance at the site and as specifically approved by the approving authority.

(8) No antenna shall be located on any tower in order to provide noncellular telephone service; such service shall be provided via existing telephone lines if available to the site or by the underground extension of telephone lines to the site if necessary.

(9) Any new tower shall be located behind existing buildings and/or natural topographic elevations in order to screen the tower's base from being visible from adjacent properties and from any street right-of-way; to the greatest extent possible, no new tower shall be visible from a public street in any residential district.

(10) Towers shall be encircled by security fencing consisting of eight (8) feet high one-inch chain link nonclimbable mesh which shall be fully screened by the required landscaping.

(11) Documentation by a qualified expert that any existing structure will have sufficient structural integrity to support the proposed antennas and ancillary equipment shall be provided to the approving authority.

8. Radio Frequency Emissions.

(a) Applicants shall provide current FCC information concerning wireless telecommunications equipment and Radio Frequency (RF) emission standards to the approving authority. Upon documentation by a qualified expert, proposed wireless telecommunications projects which meet the current FCC standards shall not be conditioned or denied on the basis of RF impact.

(b) If the FCC adopts a superseding emission standard, such new standard shall be controlling and become effective as directed in the FCC rulemaking. In such event, the applicant shall, within forty-five (45) days of the superseding emission standard's effective date, submit to the approving authority documentation of compliance with the superseding emission standard. Failure to submit such documentation shall result in a declaration by the approving authority that the equipment is no longer operative and the removal provisions of paragraph nine of this paragraph n. shall apply.

9. Removal of Abandoned/Obsolete and FCC Noncompliant Antennas and Towers.

(a) Any wireless telecommunications antenna facility not used for its intended and approved purpose for a period of one (1) year shall be considered no longer operative and shall be removed by the responsible party within sixty (60) days thereof.

10. Inventory of Sites.

(a) Existing sites. All current owners, lessors, lessees, franchisors, franchisees, licensors and licensees of wireless telecommunication towers, antennas, equipment shelters, appurtenances thereto, and/or real property used in connection therewith, which are located within the Town, shall provide to the Zoning Officer, within ninety (90) days of the adoption of this amended paragraph n., a complete inventory of all such wireless telecommunication towers, antennas, equipment shelters, appurtenances thereto, and/or real property used in connection therewith. A revised and updated complete inventory shall be provided to the Zoning Officer every two (2) years from the date of the previously submitted complete inventory. The complete inventory shall include the following information:

(1) Name and address of owner, lessor, lessee, franchisor, licensor or licensee; and

(2) Location and full description of its wireless telecommunication tower(s), antenna(s), equipment shelter(s), appurtenances thereto, and/or real property used in connection therewith;

(3) The Zoning Officer may request additional information as he or she deems necessary to reasonably comply with the purpose and provisions of this amended paragraph n.

(b) Pending and future sites. The foregoing provisions of paragraph 10 shall apply to currently pending applications and new applications relative to wireless telecommunication towers, antennas, equipment shelters, appurtenances thereto, and/or real property used in connection therewith, to the extent such pending or new applicant has legal interest in an already existing site.

o. *Containers.* Container storage is only permitted within the SKI-N District and subject to the following conditions:

1. Containers shall not be stacked more than two (2) containers high.

2. There shall be a minimum ten (10) foot wide landscaped buffer along all property lines. Buffer shall contain a combination of deciduous and evergreen trees and shrubs and berming necessary to visually screen the proposed use upon installation. At installation, plant material shall be sized a minimum of:

(a) Deciduous trees three (3) inch caliper.

(b) Evergreen trees six (6) feet in height, B&B.

(c) Deciduous and evergreen shrubbery 5-gallon container or thirty-six (36) inch B&B.

(d) Preference shall be given to native species.

(e) No plant prohibited within the NJMC shall be permitted.

3. Wetland plantings shall conform to most recent adopted Landscape and Open Space Guidelines established by the New Jersey Meadowlands Commission.

(Ord. No. 10-14-87 § 138-6.300; Ord. No. 1999-O-2 §§ 26–28, 39; Ord. No. 2002-O-78; Ord. No. 2003-(O)-23; Ord. No. 2004-(O)-64; Ord. No. 2007-(O)-06 § 1; Ord. No. 2007-(O)-17 § 1; Ord. No. 2008-(O)-04 § 1; Ord. No. 2008-(O)-14 § 2)

38-6.7 Prohibited Uses.

a. *Uses Prohibited in all Zones.* No building or premises shall be used for any purpose that is noxious or offensive by reason of the emission of odor, dust, smoke, gas, noise or vibration or that is dangerous to the public health or safety; nor shall any building or premises be used for any of the following specified purposes, except for industrial research or laboratory purposes.

1. Acetylene gas manufacture for commercial purposes;
2. Ammonia, chlorine or bleaching powder manufacturing;
3. Arsenal;
4. Asphalt manufacturing or refining, where it is the principal function of the plant;
5. Blast furnace for steel making, not including cupola or converter furnaces used in foundations and in which no wood is used as fuel;
6. Boiler shops, structural steel fabricating shops, locomotive shops and railway repair shops. Metalworking shops operating pneumatic or electric reciprocating hammers or chisels within one hundred (100) feet of any boundary line of the property and outside of any masonry building;
7. Carbon lampblack, shoeblacking, graphite or stove polish manufacture;
8. Celluloid and other cellulose products' manufacture, storage and processing of nitrocellulose scrap but excluding colloid-treated fabrics;
9. Coal-tar products' manufacture;
10. Coke ovens;
11. Creosote treatment or manufacture;
12. Distillation of coal, wood or bones;
13. Electroplating shops, except those having artificial ventilating systems constructed and operated in accordance with the rules of the State Department of Labor;
14. Explosives, fireworks or match manufacture, assembly or storage in bulk, as principal or accessory uses including such uses which are for industrial research or laboratory purposes;
15. Fat rendering;
16. Forge shop;

17. Gas storage in bulk;
18. Glue, size or gelatin manufacture or processes involving recovery from fish or animal offal;
19. Glue, size or gelatin manufacture or processes involving recovering from fish or animal offal;
20. Hazardous waste storage;
21. Incineration, reduction or dumping of offal, garbage or refuse, except where controlled by the municipality;
22. A junkyard for the storage of abandoned automobiles or other scrap material;
23. Lime, gypsum, cement, plaster or plaster of paris manufacture;
24. Linoleum manufacture;
25. Oil storage in quantities exceeding one hundred (100) gallons, except where the oil is consumed on the premises and has a specific gravity corresponding to a Baume density of not over thirty-six (36°) degrees and is stored in tanks located not less than twenty (20) feet from any of the boundary lines of the property;
26. Ore reduction or the smelting of iron, copper, tin, zinc or lead;
27. Paint, oil, varnish, turpentine, shellac or enamel manufacture where it is the principal function of the plant;
28. Perfume and extract manufacture;
29. Petroleum refining;
30. Printing-ink manufacture;
31. Pyroxylin plastic manufacture or the manufacture of articles therefrom, but excluding colloid-treated fabrics.
32. Radium extraction;
33. Raw or green salted hides or skins, their storage, coloring, curing, dressing or tanning;
34. Rubber caoutchouc or gutta-percha manufacture from crude or scrap material;
35. Sandpaper and emery cloth manufacture;
36. Sauerkraut manufacture;
37. Sausage manufacture;
38. Sewage disposal plant, except where owned and operated by the Town of Kearny;
39. Slaughtering of animals;
40. Soap, soda or washing compound manufacture;
41. Starch, glucose or dextrin manufacture;

42. Stockyards;
43. Sulfurous, sulfuric, nitric or hydrochloric acid manufacture;
44. Tallow, grease, lard or candle manufacture or refining;
45. Tar distillation or the manufacture of dyes;
46. The storage of any radioactive material or substance, except when used in connection with medical diagnosis or treatment;
47. Wool pulling or scouring;
48. Yeast manufacture;
49. Disposal or storage of human effluent;
50. Disposal or storage of industrial wastes;
51. Nuclear powered generating facilities.

b. *Additional Uses Prohibited in All Zones.* No building or premises shall be used for any of the following specified purposes:

1. The housing of persons who are civilly committed pursuant to the Sexually Violent Predator Act (N.J.S.A. 30:4-27).
(Ord. No. 10-14-87 § 138-6.400; Ord. No. 10-28-81; Ord. No. 1999-O-2 § 36; Ord. No. 2003-(O)-14)

38-6.8 Signs and Awnings.

a. No sign, billboard, advertising, device, banner, canopy or marquee shall be altered, relocated or erected in any Residential District, except signs of not more than fifty (50) square feet in area to advertise sale of land upon which they are erected or the sale of buildings to which they are attached, and builders', architects' and engineers' signs erected on the site of construction during the course of a construction operation. Such signs shall be removed within thirty (30) days after the sale of the land or buildings or the completion of the construction operation.

b. *Permitted Signs in Residential Districts.* Signs identifying schools, colleges, churches, hospitals, and other similar public institutions, and Planned Residential Developments (provided that paragraph 2 of this subsection shall not be applicable to Planned Residential Developments), are permitted in Residential Districts, provided that:

1. The height of any ground sign shall not exceed six (6) feet and the sign area shall not exceed sixteen (16) square feet on each side. Not more than one (1) such sign shall be placed along any street on which such property fronts. The base of such signs need not be constructed entirely upon but shall be appropriately landscaped.

2. Not more than two (2) wall signs may be located on the front building facades of any structures on the lot. The area of each sign shall not exceed twenty-four (24) square feet.

3. Signs designating entrances or exits to or from parking areas shall be permitted not to exceed two (2) square feet in area.

c. Additional explanation of what is meant by sign area: 1) For any sign painted upon or applied/attached to the building, the area considered to include all lettering, wording, and accompanying designs and symbols, together with the background of a different color than the natural or primary color of the building; 2) Where the sign consist of individual letters or symbols attached to or painted on a building, awning or wall the area shall be considered to be that of the smallest rectangle or other geometric shape that encompasses all of the letters, designs or symbols; 3) Only one (1) side of a double faced sign will be counted in computing the area of that sign.

Any question you may have can be answered by calling the Construction Code Department at 201-955-7880, located at 402 Kearny Avenue, Kearny, NJ 07032.

d. Signs, billboards, advertising devices, canopies and marquees shall be erected and maintained to insure public safety by the owner or lessee of the premises upon which they may be erected. No sign, billboard or advertising device shall cover any part of the window, obstruct any exit or be fastened in any manner to any part of a fire escape.

e. *Construction and Location of Signs.*

1. Wood signs shall be constructed of seasoned lumber not less than three-quarters (3/4) of an inch in thickness, battened across the backs to insure rigidity.

2. Metal signs shall be constructed with frame made of iron or steel angles, channels and other necessary iron or steel shapes of sufficient sizes and weights, covered on the exterior with sheet metal of not less than 26 U.S. Gauge.

3. Supports for signs, billboards or advertising devices erected upon the ground may be constructed of wood or metal and shall be of sufficient size and number, extended at least three (3) feet into the ground, braced and secured in a manner approved by the Construction Official.

4. Supports of signs, billboards or advertising devices attached to or erected upon buildings or structures shall be constructed of iron or steel angles not less than one-quarter (1/4) of an inch in thickness, of sufficient size and number, braced and secured to the building or structure in a manner approved by the Construction Official. The use of chain is prohibited.

5. Signs, billboards or advertising devices erected upon the ground, and flat signs not over thirty (30) inches in width attached to buildings or other structures may be constructed of wood. All other signs, billboards or advertising devices, except banners, shall be constructed entirely of metal. Raised wood letters may be attached to metal signs.

6. Signs, billboards or advertising devices erected upon the ground shall be located not less than five (5) feet from the street property line upon which they face, except that on a corner of two (2) streets they shall be located not less than ten (10) feet from each property line, subject to subsection 38-5.1c herein.

7. Except for signs authorized by a governmental agency, no freestanding permanent or temporary signs shall encroach upon any public right-of-way or any public property.

f. *Projecting Signs.* Projecting signs are to be made out of wood, komatex (rigid plastic), or framed aluminum. No internally illuminated signs are allowed. Signs are not permitted to be located less than nine (9) feet above the sidewalk and shall not exceed ten (10) square feet in area. Two (2) copies of color to-scale sketches with the location of the projected sign on the building, along with letter sizes, must accompany the permit application.

1. Projecting signs or advertising devices erected at right angles to the face of the building or structure shall be not more than sixteen (16) inches in thickness, including the overall dimensions of raised or applied letters or other ornament or attachment. Such signs or advertising devices shall not be higher than the building or structure upon which they are erected, except that on one (1) story buildings they may extend five (5) feet above the roof of the building. Not more than one (1) projecting sign shall be permitted for each business use.

2. Projecting signs or advertising devices shall be erected not less than nine (9) feet above the surface of the ground and shall project not more than four and one-half (4 1/2) feet from the face of the building or structure and in no case to within three (3) feet of the curbline, and shall not be erected nearer to an interior property line than a distance equal to the greatest projection.

3. Flat signs of metal of any dimensions, reinforced by wood or metal frames, may be erected on any business building occupying space below, between or above windows, provided such signs do not project more than eight (8) inches at any point beyond the walls or extend above the roof of the building to which they are attached; and further provided that such signs shall not be less than seven (7) feet six (6) inches above the surface of the ground. Wood letters and decorated wood mouldings may be attached to the face of such metal signs.

4. In C-1, C-2, C-3 and C-4 Districts, total sign area of wall signs shall not exceed ten (10%) percent of the first floor front building facade area and in any event shall not exceed one hundred (100) square feet. Buildings on a corner lot or with a side building wall exposed to public view may include each building facade as a separate frontage.

g. *Signs Erected Upon the Ground and Roof.*

1. Signs, billboards or advertising devices erected upon the ground shall not be more than sixteen (16) feet high above the surface of the ground at any point and shall be constructed entirely open for a height of at least three (3) feet above the surface of the ground, except that open lattice work may be placed in such openings.

2. Roof signs shall not be permitted in any district.

3. Ground Signs. Maximum sign area for a ground sign shall not be more than thirty (30) square feet on each side. Not more than one (1) ground sign permitted on any lot except for corner lots which may be permitted one (1) ground sign on each frontage. Retail centers, industrial parks or office centers with five (5) or more separate uses may erect a ground sign totaling not more than one hundred (100) square feet in area and set back not less than twenty (20) feet from the street property line.

h. *Canopies, Marquees and Temporary Banners.*

1. Canopies may be erected and maintained across the sidewalk to within eighteen (18) inches of the curblin, in a manner so as not to interfere with normal sidewalk traffic, and shall be constructed with iron or steel framework covered with canvas or other suitable material, anchored to the ground and to the building or structure from which they may extend, in a manner approved by the Construction Official. Such applications shall first be approved by the Mayor and Council of the Town of Kearny, New Jersey before approval by the Construction Official.

2. Marquee and marquee signs and similar structures shall be of fireproof construction, erected not less than ten (10) feet above the sidewalk and not less than eighteen (18) inches from the curblin. Such applications shall first be approved by the Mayor and Council of the Town of Kearny, New Jersey, before approval by the Construction Official.

3. Temporary banners may be erected, maintained and suspended across a street or streets when properly attached to the buildings or other supports on either side of the street, and in no case less than twenty (20) feet above the surface of the street. The application shall be accompanied by the consent of the owners of the buildings to which the supports are to be attached, and no permit shall be issued for a greater period of time than sixty (60) days. Such applications shall first be approved by the Mayor and Council of the Town of Kearny, New Jersey, before approval by the Construction Official.

i. *Flashing, Animated or Confusing Signs and Devices.*

1. Notwithstanding the provisions of any other ordinance, any advertising, or commercially used sign or device located in whole or in part within one hundred (100) feet of the right-of-way of any street and which sign contains lights which move, flash, blink, fluctuate, animate or rotate, or which contains any light or lights, whether flashing or not, similar in color and size, color and shape or color and arrangement to any traffic control device or emergency vehicle light is hereby declared to be a public nuisance and is prohibited. Signs giving public service information such as time, date, temperature, weather or similar information intermittently with low-intensity lights which are not similar in any respect to traffic control devices or emergency lights are not prohibited after the effective date of this section. It shall be unlawful for any person, firm or corporation to install, cause to be installed, operate, maintain or modify any sign or device prohibited by this section as a nuisance, and each day such nuisance is maintained shall be a separate offense.

2. Any provision of paragraph 1 above to the contrary notwithstanding, the prohibitions herein contained shall not apply to any sign already erected and attached to any building on the effective date hereof.

j. *Administration.*

1. Permit Required. Except as heretofore mentioned, no sign, billboard, fence, advertising device, banner, canopy or marquee shall be altered, relocated or erected upon the ground or upon or above any building or structure in the Town of Kearny, New Jersey, without having first obtained and paid for a permit from the Construction Official of the Town of Kearny, New Jersey.

2. Permit Applications. Applications for permits shall be made on forms furnished by the Construction Official, together with two (2) sets of drawings showing the construction and supports of such sign, billboard, fence, advertising device, banner, canopy or marquee, and a plot plan or diagram showing the proposed location.

Applications for electrical signs, billboards or advertising devices shall be accompanied with an acknowledgment of application for certificate of inspection and approval by the electrical subcode official.

3. The fee for a permit to alter, relocate or erect any sign, billboard, advertising device, banner, canopy or marquee shall be in accordance with the Fee Ordinance of the Town of Kearny.

k. *Signs in the C-1, C-2, C-3 and C-4 Districts.*

1. Any sign hereafter erected, displayed or repaired, except as permitted under subsection 38-8.2, within the C-1, C-2, C-3 or C-4 Zone Districts shall conform to the provisions of this paragraph and any other ordinance or regulation of the Town of Kearny and shall not be erected, displayed or replaced without the issuance first of a zoning and sign permit by the Construction Official along with the payment of the required fees. Applications for permits shall be submitted to the Construction Official of the Town of Kearny in accordance with subsection 38-6.8j. and shall include (i) an accurately scaled, prepared drawing of the proposed sign and supporting frame, construction, size of letters, details and illumination and (ii) a scaled drawing or photograph of the building for which the sign is proposed, with the location of the sign accurately indicated. Two (2) sets of these drawings must accompany the application. Applications for permits shall be made on forms furnished by the Construction Department located at 402 Kearny Avenue, Kearny, NJ 07032. The Construction Official shall consult with the UEZ coordinator before issuing the permit.

2. Definitions. As used in this paragraph, the following terms shall have the meanings indicated:

Awning shall mean a flexible covering constructed out of acrylic canvas (Sunbrella brand or similar) over a rigid or fixed canopy-like frame that is affixed to a building wall and must be of a shape and color that compliments the architecture of the building.

Awning sign shall mean a sign applied directly to a flexible covering over a rigid or fixed canopy-like frame that is affixed to a building wall. An awning sign shall be considered as a sign which projects perpendicularly from a building wall for purposes of this paragraph.

Business District shall mean the area of the Town of Kearny located within the C-1, C-2, C-3 and C-4 Zone Districts as shown on the official Zoning Map.

Ground sign shall mean a freestanding sign permanently affixed, anchored or secured to the ground. They must be made out of wood, framed aluminum or any other solid traditional material.

Portable sign shall mean a freestanding sign not permanently affixed, anchored or secured to the ground. Portable signs include sandwich signs and blackboards.

Projecting signs shall mean any signs made out of wood, komatex (rigid plastic), or framed aluminum which shall be prohibited at height less than nine (9) feet above the sidewalk and may not exceed ten (10) square feet in area.

Sign shall mean any structure, light, letter work, model, banner, pennant, insignia, trade flag or representation or any other device used to advertise, inform or attract the attention of the public and which is designed to be seen from outside a building, excluding window displays of merchandise and informational material incidental to the display or sale of merchandise.

Sign area shall mean:

- a. For a sign painted upon or applied/attached to a building, the area is considered to include all lettering, wording and accompanying designs and symbols, together with the background of a different color than the natural or primary color of the building.
- b. Where the sign consists of individual letters or symbols attached to or painted on a building, awning or wall, the area shall be considered to be that of the smallest rectangle or other geometric shape that encompasses all of the letters, designs or symbols.
- c. Only one (1) side of a double-faced sign will be counted in computing the area of that sign.
- d. The area of a flat, irregularly shaped sign shall be the smallest plane geometric figure that will wholly contain it.

Wall signs shall mean nonilluminated signs that can be made out of wood, komatex (rigid plastic), or framed aluminum.

Window sign shall mean any sign temporarily or permanently affixed to the glass of a window or door of a business or that is visible through a window or door and placed on a regular basis within three (3) feet of the glass.

3. All signs in the Business District shall comply with the following regulations:

(a) No sign shall be backlighted. Signs (including wall signs, awning signs, window signs and portable signs) may only be indirectly illuminated so that such light source is properly shielded from residences and streets.

(b) No sign shall be lighted with flashing lights.

(c) Signs which project perpendicularly from a building wall are prohibited unless such sign (i) does not exceed ten (10) square feet, (ii) the lowest portion of which is a minimum of nine (9) feet above the sidewalk and (iii) is not internally illuminated.

(d) Neon. Only two (2) pieces of neon are allowed per establishment and shall be no more than four (4) square feet per piece. No flashing neon is allowed. No neon borders are allowed. Neon is considered part of the allowable ten (10%) percent of the

first floor front square footage sign area. Two (2) color to-scale sketches with the location of the neon must accompany the sign application.

(e) Neon channel or reverse neon channel letters are letters that are made from metal formed letters that house rows of neon inside the letters that are then covered with plastic faces. In the case of reverse neon channel letters the front and sides of the letters are made out of metal mounted up off the wall and the neon halo of light stream out the back of the letters onto the facade of the building. The total sign area for neon channel and reverse neon channel letters follows the same guidelines as for wall signs which is not to exceed ten (10%) percent of the first floor front building facade area and in any event may not exceed one hundred (100) square feet. Two (2) copies of a color to-scale sketch of the placement of the letters on the building must accompany the sign application. Buildings on a corner lot may erect an additional sign for each business establishment or use in that building.

(f) Individually formed letters are nonilluminated plastic or metal individual letter or logos mounted on a wall with stainless steel studs. The sign area for individual formed letters is the same as for wall signs which is not to exceed ten (10%) percent of the first floor front facade area and in any event shall not exceed one hundred (100) square feet. Buildings on a corner lot may erect an additional sign for each business establishment or use located in that building. Two (2) copies of a color to-scale sketch of the placement of the letters on the building must accompany the sign application.

(g) Window lettering is only allowed using pressure sensitive vinyl and is considered part of the allowable ten (10%) percent of the first floor front square footage sign area. No window may be painted except for seasonal displays. Two (2) color to-scale sketches of the placement of the lettering must accompany the permit application.

4. Wall signs nonilluminated signs that can be made out of wood, komatex (rigid plastic), or framed aluminum. Two (2) copies of color to-scale sketches must accompany the sign application. Letter sizes must be shown on the sketch. Wall signs are permitted on each building wall that faces a street in the business district, subject to the following limitations and requirements:

(a) Not more than one (1) wall sign shall be permitted for each business establishment or use located in the building except that on corner properties an additional sign may be erected on the side of the building for each business establishment or use located in that building.

(b) No wall sign shall extend farther than six (6) inches from the face of the building wall to which it is attached except that an awning sign may extend up to three (3) feet from the facade of the building to which it is attached.

(c) The height of any sign shall not exceed two and one-half (2 1/2) feet or twenty (20%) percent of the height of the building wall to which it is attached, whichever is less. In no event may the Sign Area of any sign exceed ten (10%) percent of the area of the building wall to which it is attached.

(d) Reserved.

(e) No sign shall be affixed upon a building or structure in any manner which disfigures, damages or conceals any window opening, door or significant architectural feature or detail of said building or structure.

(f) Reserved.

(g) On a sign with horizontal format attached to a building, the maximum allowable height for lettering shall not be more than eighty (80%) percent of the height of the sign.

5. (a) Temporary banner or Coroplast signs may be displayed temporarily to advertise a grand opening, sale or relocation of a business for a period not to exceed forty-five (45) days. They shall be limited to a size of fifteen (15) square feet. A temporary banner or coroplast permit must be secured before installing.

(b) Except as provided for in paragraph k,5(a), coroplast or paper signs may be displayed temporarily for a period of not to exceed seven (7) days. The display of Coroplast or paper signs shall not exceed the greater of five (5) square feet or five (5%) percent of each of the total footage of each windowpane. A permit shall not be required for installation.

6. Portable signs that inform the public of sales or events may be displayed temporarily on a public sidewalk, subject to the following limitations and requirements:

(a) The sign does not exceed an area of four (4) square feet and a height of four (4) feet.

(b) The sign is on display only during hours that the retail establishment conducting the sale or event is open for business.

(c) The sign is located within three (3) feet of the property line of the retail establishment conducting the sale or event.

(d) The application for a permit shall include an indemnification agreement pursuant to which the applicant shall agree to forever defend, protect, indemnify and save harmless the Town of Kearny, its officers, agents and employees from any and all claims, causes of action, injuries, losses, damages, expenses, fees and costs arising out of such portable sign.

(e) Only one (1) sign per establishment is allowed.

7. Ground signs shall mean any freestanding sign permanently fixed, anchored or secured to the ground in the Business District and are subject to the following limitations and requirements:

(a) Sign must be made out of wood, framed aluminum or any other solid traditional materials.

(b) Sign may not exceed thirty (30) square feet on each side.

(c) Sign height is not to exceed sixteen (16) feet.

(d) Sign must be set back at least five (5) feet from the property line.

(e) Only one (1) sign shall be permitted per lot.

(f) Sign may not be internally illuminated, but may be externally illuminated by either ornamental incandescent fixtures mounted to the sign structure or by ground fixtures.

(g) Two (2) copies of a color to-scale sketch of the sign and the placement of it on the property must accompany the permit at the time of application. Letter sizes must be indicated on the sketch.

8. Political nonprofit or not-for-profit organization signs and temporary contractors signs shall be of temporary construction and the signs shall not remain displayed for longer than thirty (30) days during any six (6) month period.

9. Awnings. The installation of awnings is encouraged. The awning may be stationary or retractable. The size of the awning is regulated by Kearny Construction Code Enforcement Department and requires a zoning permit and construction permit to be installed. Two (2) copies of a to-scale sketch of the awning on the building must accompany the permit at the time of application. Awning shall be subject to the following limitations and restrictions:

(a) Awning must be made out of acrylic canvas (Sunbrella brand or similar) and should be a shape and color that compliments the architecture of the building.

(b) No vinyl awnings are permitted.

(c) No back-lit awnings are permitted.

(d) Lettering is restricted to the vertical flap of the awning, which shall not exceed eight (8) inches in height.

(e) Permission to encroach over town property with the awning must be sought and obtained from the Kearny Governing Body prior to making application for permit. Requests for approval to encroach must be in writing and submitted before the second Tuesday of the month to: Mayor and Town Council, 402 Kearny Avenue, Kearny NJ 07032.

(Ord. No. 10-14-87 § 138-6.500; Ord. No. 6-27-90; Ord. No. 1999-O-2 §§ 21, 35; Ord. No. 2000-0-28 §§ 1-8; Ord. No. 2003-(O)-22; Ord. No. 2003-(O)-34 §§ 1-3; Ord. No. 2005-(O)-32)

38-6.9 Fences and Walls.

a. No fence or wall located to the rear of the minimum required front yard shall be erected more than six (6) feet in height and shall be erected within the property lines, except that a height of eight (8) feet shall be permitted in such side or rear yard areas along those property lines where a residential use abuts a nonresidential use.

b. The maximum height of a fence or wall shall not exceed forty-eight (48) inches in the required front yard of a residential district or in a side yard adjacent to the street line of a corner lot. All fences and walls in the required front yard of residential districts or in the side yard of a corner lot shall be at least fifty (50%) percent open.

c. No fence, wall, or other visual barrier shall be so located that it obstructs the vision of a motor vehicle driver approaching any street or driveway intersection. All fences shall meet the requirements of subsection 38-5.1c where applicable.

d. The finished side of any fence or wall shall be oriented to the outside of the lot.
(Ord. No. 10-14-87 § 138-6.600; Ord. No. 1999-O-2 § 29)

38-6.10 Planned Developments.

a. *General.* Prior to approval of any planned development, the Planning Board shall find as required by N.J.S.A. 50:55D-45, the following facts and conclusions:

1. That departures by the proposed development from zoning regulations otherwise applicable to the subject property conform to the zoning standards applicable to the planned development.

2. That the proposals of maintenance and the amount, location and purpose of the common open space are adequate.

3. That provision through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual enjoyment are adequate.

4. That the proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established.

5. In the case of a proposed development which contemplates construction over a period of years, that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate.

b. *Planned Commercial Development Groups.*

1. Purpose. Planned commercial development groups shall be permitted in certain locations and under specific conditions to accommodate commercial or office uses or both and other uses incidental to the predominant use as hereinafter permitted.

2. Required Area. The minimum contiguous size for planned commercial development groups shall be as follows:

C-3 and C-4 District: One (1) acre

SKM District: Five (5) acres

3. Development Plan. The planned commercial development group shall be developed according to a plan as a single entity containing one (1) or more structures with appurtenant common areas. The development plan shall demonstrate a coordinated treatment of building location, orientation and relationship; vehicular access, parking, pedestrian access and emergency access; landscaping, lighting and open space areas; and facility management, security and operations.

4. Permitted Uses. Permitted uses shall be as follows:

(a) C-3 Community Business District: Any principal and accessory uses permitted in the C-3 District other than residential uses and under the same conditions as prescribed therein.

(b) C-4 General Business District: Principal and accessory uses permitted in the C-4 District other than residential uses and under the same conditions as prescribed therein.

(c) SKI-N South Kearny Industrial-North and SKI-S South Kearny Industrial-South Districts:

(1) Principal uses:

Bank and other financial institutions;

Department store;

Dry goods, clothing and variety store but not including outlet sales;

Food store;

Furniture store;

Hotel and conference facilities;

Movie theater;

Offices, business and professional;

Restaurants;

Fast food restaurants if developed as part of a shopping center building but which shall not include drive through service.

(2) Accessory uses: Any accessory uses permitted in the C-3 District other than residential uses and under the same conditions as prescribed therein.

(3) Other incidental uses: In the SKM^{*} District, industrial uses permitted in the LI District may be permitted as part of a planned commercial development group, provided however that such use shall be incidental to the predominant use and shall conform to all other requirements of this chapter.

(4) Conditional uses: Any conditional uses permitted in the SKI-N and SKI-S zone under the same conditions prescribed therein.

5. Bulk Regulations. Planned commercial developments shall conform to the following bulk regulations:

(a) Height regulations shall be the same as the height regulations in the SKM^{*} Zone.

(b) Improved lot coverage regulations shall be the same as the improved lot coverage regulations in the SKM* Zone.

c. *Planned Industrial Development Groups.*

1. Purpose. Planned industrial development groups shall be permitted in certain locations and under specific conditions to accommodate industrial uses in single planned development.

2. Required Area. The minimum contiguous size for planned industrial development shall be ten (10) acres.

3. Development Plan. The planned industrial development group shall be developed according to a plan as a single entity containing one (1) or more structures with appurtenant common areas. The redevelopment plan shall demonstrate a coordinated treatment of building location, orientation and relationship; vehicular access, parking, pedestrian access and emergency access; landscaping, lighting and open space areas; and facilities management, security and operations.

4. Permitted Uses and Bulk Regulations. Permitted uses and bulk regulations shall be the same as the district in which the planned industrial development group is located.

d. *Limited Income Housing.*

1. Conditions. Limited income housing (LIH) as required by and regulated in this chapter shall meet the following conditions:

(a) LIH units within each such development in the CLH Zone shall be made available exclusively to limited income households at the ratio of not less than fifty (50%) percent low income households nor more than fifty (50%) percent moderate income households.

(b) For purposes of this section, a lot income household is one having a total income which is not more than fifty (50%) percent of the median household income adjusted for household size in the Standard Metropolitan Statistical Area (SMSA), Newark, New Jersey Housing Region, as established by the United States Department of Housing and Urban Development (HUD) for the purpose of administering the Federal Housing Assistance Payments Program (Section 8) or by other generally accepted Federal or New Jersey data base. The aforesaid percentage may be amended from time to time as provided in this section.

For purposes of this section, a moderate income household is one having a total income which is not less than fifty (50%) percent nor more than eighty (80%) percent of the median household income adjusted for household size in the Standard Metropolitan Statistical Area (SMSA), Newark, New Jersey Housing Region, as established by the United States Department of Housing and Urban Development (HUD) for the purpose of administering the Federal Housing Assistance Payments Program (Section 8) or by other generally accepted Federal or New Jersey data base. The aforesaid percentages may be amended from time to time as provided in this section.

(c) Occupancy of LIH units constructed under the provisions of this section shall be limited to low and moderate income households as defined in this section and shall be affordable to such households as follows:

(1) In establishing affordability of a unit of a given number of bedrooms, such units must be affordable to household sizes as set forth below.

1 bedroom unit	2 person household
2 bedroom unit	3 person household
3 bedroom unit	5 person household

(2) In the case of LIH units offered for sale, each unit shall be affordable to a household earning no more than eighty (80%) percent of the ceiling income for that household, by household size and income category, spending not more than twenty-eight (28%) percent of its gross household income for the sum of the mortgage, based on: (i) a ten (10%) percent down payment and realistically available mortgage interest rates; (ii) property taxes as currently levied in the Town of Kearny; (iii) insurance; and (iv) homeowners' association fees, if any. The proposed prices of LIH units to be offered for sale, and the calculation by which those prices have been determined, shall be submitted for approval by the applicant as a part of application for preliminary site plan approval.

(3) In the case of LIH units offered for rent, they shall be rented for no more than thirty (30%) percent of the gross household income of the low or moderate income household, the rental to be inclusive of all services, maintenance and utilities. In the event that any utility or other charges are paid directly by the tenant, the maximum rental of thirty (30%) percent shall represent the sum of the contract rent and all such utility or other charges. Rents shall be set individually for each tenant on the basis of individually verified household income.

(d) Sale or rental of LIH units shall be on the basis of income and residency of applying eligible households. Where the number of applicants exceed the number of LIH units available, the sale or rental of such units shall be in accordance with the date of application submitted, with earlier applicants being given preference over later applicants. The distribution of available LIH units shall be consistent with the proportion of income categories as provided in paragraph d, 1(a) above. Notwithstanding anything to the contrary contained herein, indigenous limited household applicants within the respective low or moderate income categories shall be given preference at all times over non-indigenous limited income household applicants within the same category.

(e) All applicants for the purchase or rental of LIH units shall meet the income qualifications established in this section at the time the application is filed and shall be qualified at the time of taking title or occupancy.

(f) All tenants of rented LIH units shall be required to give proof of continued income qualifications on the first and each subsequent anniversary date of taking occupancy. A household that ceases to meet the qualifications as a low income household but does meet the qualifications of a moderate income household may continue to occupy the unit, and the next moderate income unit to become available

which is owned by the same owner as the unit changing from low to moderate income occupancy shall be rented to a low income household. Any tenant household having an income which on the first or any subsequent anniversary date of taking occupancy exceeds one hundred twenty-five (125%) percent of the current maximum income limitation for a moderate income household shall be required to vacate the rented unit upon nine (9) months written notice. Upon the issuance of the written notice to vacate, the limitation of rental charges as set forth in this section shall cease to apply and until the subject unit is vacated the owner shall be entitled to an increase in rent, provided that the increase does not exceed thirty (30%) percent of the amount by which the tenant's income exceeds the current maximum income limitation for a moderate income household. In the implementation of this paragraph, income limitations shall be adjusted for household size.

(g) Any developer submitting an application for development which includes LIH units shall submit a plan for resale or rental controls to insure that the LIH units remain affordable to low and moderate income households for at least thirty (30) years. Such plan shall contain all of those provisions set forth in this section, as well as conform to any regulations or guidelines adopted by the Town of Kearny or any governmental agency or nonprofit entity delegated this authority by the Town of Kearny.

(1) Any plan for controlling the resale of LIH units shall permit the owner of such units, upon resale, to sell that unit for:

i. The original sales price plus the original sales price multiplied by seventy-five (75%) percent of the percentage increase in the Consumer Price Index between the date of initial purchase and the date of resale.

ii. Reimbursement for documented monetary outlays made for reasonable property improvements and

iii. Reasonable costs incurred in selling unit.

(2) Any such plan shall provide that the low income units upon resale may be sold only to low income households, and the moderate income units to either low or moderate income purchasers; provided, however, that the administering agency may establish reasonable provisions for waiver of this condition on a case by case basis in the event it finds that a particular unit may not feasibly be sold subject to this condition. In the event that the administering agency grants such a waiver, it may provide that the unit be sold at the formula price, and that the resale controls remain in effect for any subsequent sales of the unit.

(3) The Town of Kearny may administer these controls directly, or may enter into an agreement with a nonprofit corporation or other governmental entity, or may permit the developer to administer these controls, either directly or through a nonprofit entity established by the developer, but in no event may the Town of Kearny require the developer to administer these controls as a condition of approval nor may the resale controls be administered merely by the existence of a deed restriction on the property.

(4) Resale controls shall be embodied in a deed restriction on the property that shall be submitted by the developer at the time of preliminary site plan approval, and shall be subject to approval by the Town Attorney and by the administering agency. All deed restrictions shall be consistent with all of the provisions of this section, and with any regulations or guidelines adopted by the administering agency.

(5) Any LIH unit offered as a rental unit shall continue to be offered as a rental unit for at least fifteen (15) years. After fifteen (15) years, they may be converted to condominium or cooperative occupancy, but must be sold at prices affordable to moderate income households, as defined herein, occupied by low or moderate income households, and subject to such resale controls as may be necessary to insure that the units will continue to be affordable to moderate income households for the remainder of the thirty (30) year period commencing with the issuance of certificates of occupancy on the last LIH unit in that development.

(6) The administering agency, subject to review by the Town at the option of the Council, shall adopt such regulations and guidelines as may be necessary to carry out the provisions of paragraph (g) through (g)(6).

(h) Notwithstanding any other provisions of this section, the Town of Kearny shall have the right to purchase, either directly or through a governmental agency or authority or through a corporation under contract with the Town, any or all LIH units constructed in any development. Such right must be exercised by written notice to the developer within thirty (30) days after the issuance of a construction permit or permits for the unit or units involved. Notice shall be mailed by certified mail return receipt requested, to the developer at the address of the developer set forth in the application for construction permit, and the notice shall become effective upon mailing.

The purchase price for any unit shall be the agreed upon estimated highest price at which the unit could be sold to a qualified low or moderate income purchaser, as the case may be.

Closing of title on the purchase of any unit or units shall take place within thirty (30) days after the issuance of a certificate of occupancy for the unit or units.

2. Administration. Except as to the provisions of paragraph (g) above, the administration and enforcement of the provisions of this paragraph as they pertain to LIH units shall be undertaken and performed by the Town Administrator, unless the Town Council shall by resolution designate a governmental agency or nonprofit entity to undertake and perform responsibilities.

3. Periodic Review for Modification of Standards. The standards established in this section for qualification as a low income household, a moderate income household and the rental allowed to be charged for occupancy of LIH units shall be reviewed periodically by the Town Council which shall, from time to time, adopt such amendments to this section as are required to assure that such standards conform to the applicable decisional and statutory law of New Jersey. In the event that the standards established by this section are so amended

hereafter, such amended standards shall apply to any LIH units which have been constructed pursuant to this section and which are in existence at the time that such standards are so amended.

(Ord. No. 10-14-87 § 138-6.700; Ord. No. 12-12-90; Ord. No. 2004-(O)-64)

38-6.11 Newsracks.

a. *Findings, Purpose and Intent.*

1. The uncontrolled placement of newsracks in public rights-of-way presents an inconvenience and danger to the health, safety and welfare of persons using such public rights-of-way, including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control and emergency services.

2. The uncontrolled placement of newsracks is also detrimental to the aesthetic characteristics of the Town and unsightly newsracks located in the public rights-of-way constitute public nuisances and cause visual blight.

3. It is the purpose and intent of this section, in the interest of public safety, aesthetics and the general welfare of the Town, to reasonably regulate the placement, maintenance and operation of newsracks within the Town of Kearny.

b. *Definitions.* As used herein, the following terms shall have the meanings indicated:

Distributor shall mean the person, corporation, employee or agent who places and maintains or operates a newsrack in a public right of way as herein defined.

Driveway shall mean that surface, whether improved or not, over and by which ingress and egress is made by private or public property or by which vehicles move from private or public property onto a street.

Newspaper, news periodicals, news magazine shall mean any newspaper, periodical or magazine of general circulation as defined by general law; any newspaper duly entered with the Post Office Department of the United States, in accordance with Federal statute or regulation; and any newspaper filed and recorded with any recording officer, as provided by general law.

Newsrack shall mean any self-service or coin-operated box, container, storage unit or other dispenser erected, installed, maintained or operated for the display, distribution and/or sale of newspapers, circulars, pamphlets, news periodicals, magazines, or other similar publications.

Public right-of-way shall mean a street, sidewalk or roadway.

Roadway shall mean that portion of a street improved, designated or ordinarily used for vehicle travel.

Sidewalk shall mean any public surface or area provided for the use of pedestrians, including the area between the curb of any street and the sidewalk, or, if there is no sidewalk, the area between the edge of the street and the property line adjacent thereto.

Street shall mean all that area dedicated to public use for public street purposes and shall include but not be limited to roadways, parkways, alleys and sidewalks.

c. *Compliance and Permit Required.*

1. It shall be unlawful for any person, firm, corporation or distributor to erect, place, maintain or operate a newsrack on any public right-of-way within the Town of Kearny, without first having obtained a permit from the Zoning Official. The permit shall specify the exact location of each newsrack. One (1) permit may be issued to include any number of newsracks and shall be signed by the applicant.

2. An application for such permit shall be made, in writing, to the office of the Zoning Official of the Town of Kearny upon such form as shall be provided and shall contain the name and address of the applicant and the proposed specific location of said newsrack or newsracks and shall be signed by the applicant. The application must be accompanied by a color sketch or color drawing, to scale, and specifications of the proposed newsrack depicting compliance with the requirements for dimensions, color and lettering, and the application shall be signed by the applicant.

3. If the applicant meets all the requirements of the provisions of this section, the permit shall be issued within ten (10) business days.

4. If the application is denied, the Zoning Official, within ten (10) business days and by regular mail, shall set forth in writing the reasons for the denial. For each requested location, the Zoning Official shall have an additional two (2) business days to act.

5. Such denial by the Zoning Official may be appealed within thirty (30) days to the Construction Board of Appeals who shall render a decision within thirty (30) days.

d. *Conditions for Permit; Fee; Term; Liability Insurance.*

1. Permits may be issued for the installation of a newsrack or newsracks, but such newsrack or newsracks and the installation, use or maintenance thereof shall be conditioned upon compliance with the provisions of this section.

2. The application for a permit shall require the payment of an application fee of one hundred (\$100.00) dollars.

3. There shall be a registration fee of fifty (\$50.00) dollars per newsrack payable after the time the application for a permit is approved.

4. The permit shall be valid for a period of one year, on a fiscal-year basis, commencing on January 1, and shall be renewable on January of the subsequent year. Permits shall be renewable pursuant to the procedure for original applications, upon payment of the fifty (\$50.00) dollars registration fee per newsrack which shall be used to defray the cost of inspection. The registration fee shall be prorated if the permit issued is effective subsequent to January 1.

5. No permit shall be issued or continued in operation unless the applicant and any other persons, organizations, firms or corporations on whose behalf the application is made for filing such application do represent, stipulate, contract and agree that they will jointly and severally defend, indemnify and hold the Town of Kearny harmless against liability for

any and all claims for damage to property or injury to or death of persons arising out of or resulting from the issuance of the permit or the control, maintenance or ownership of the newsracks permitted.

6. No permit shall be issued or continued in operation unless the applicant shall file with the Zoning Officer an insurance policy or policies of a company duly licensed to transact business under the insurance laws of this State, with coverage limits of at least one hundred thousand (\$100,000.00) dollars per person and one million (\$1,000,000.00) dollars per accident, insuring against loss from liability imposed by law upon the distributor for damages on account of bodily injury or death suffered, and in the sum of fifty thousand (\$50,000.00) dollars against loss on account of property damage suffered by any person or persons as a result of an accident occurring by reason of the ownership, control or maintenance of a newsrack, and no permit shall continue effective unless such insurance shall remain in full force and effect, during the entire term of the permit. Such insurance policy shall provide for the payment of any final judgment recovered by any person on account of the ownership, maintenance and control of such newsrack, or any fault in respect thereto, and shall be for the benefit of any person suffering loss, damage or injury as aforesaid.

Each insurance policy shall provide that neither the distributor, nor its insurer, shall have any right to subrogation against the Town of Kearny. Each insurance policy shall provide primary coverage for any and all losses and shall be drafted so as to protect all parties.

The distributor shall have the Town of Kearny added as an additional insured on the insurance policies required by this subsection.

e. *Maintenance; Installation.*

1. Any newsrack which in whole or in part rests upon or over any public sidewalk, roadway or street and which is so permitted in a location under the terms of this section shall comply with the following standards;

2. No newsrack shall exceed forty-nine (49) inches in height, twenty (20) inches in width or eighteen (18) inches in depth. Newsracks shall be manufactured of sturdy metal housing, using twelve (12) gauge sheet metal or better, finished with a prime coat and baked powder coat finish.

3. Newsracks shall be green with white lettering, but lettering shall not exceed three (3) inches in height and shall not cover more than ten (10%) percent of the surface area of the newsrack.

4. Notwithstanding any provision in this subsection to the contrary, any newsrack located in a streetscape design area shall conform to the aesthetic characteristics of the streetscape plan.

5. No newsrack shall be used for advertising signs or publicity purposes other than those dealing with the display, sale or purchase of the news materials sold therein.

6. Each newsrack wherein a consideration is charged for the dispensing of its product shall be equipped with a coin-return mechanism to permit a person using the machine to secure an immediate refund in the event that he is unable to receive the publication paid for. The coin-return mechanism shall be maintained in good working order.

7. Each newsrack shall have affixed to it, in a readily visible place so as to be seen by anyone using the newsrack, a notice setting for the name and address of the distributor and the telephone number of a working telephone service to report a malfunction or to secure a refund in the event of a malfunction of the coin-return mechanism or to give the notices provided for in this section.

8. Each newsrack shall be maintained in a neat and clean condition and in good repair at all times. Specifically, but without limiting the generality of the foregoing, each newsrack shall be serviced and maintained so that:

(a) It is reasonably free of chipped, faded, peeling and cracked paint in the visible painted areas thereof.

(b) It is reasonably free of rust and corrosion in the visible unpainted metal areas thereon.

(c) The clear plastic or glass parts thereof, if any, through which the publications therein are viewed are unbroken and reasonably free of cracks, dents or blemishes and discolorations.

(d) The paper or cardboard parts or inserts thereof, if any, are reasonably free of tears, peeling or fading.

(e) The structural parts thereof are not broken or unduly misshapen.

(f) It is free from all graffiti.

9. It shall be unlawful for any person or place to maintain any publication or material in newsracks which is obscene as defined by the United States Supreme Court and/or as set forth in N.J.S.A. 2C:34-2 or -3 or which exposes to public view any pictorial material which depicts or appears to depict nudity or offensive sexually explicit material.

10. Each newsrack shall be maintained to prevent the newspapers or magazines from being scattered about the area.

11. Each newsrack not located on an existing sidewalk or other hard surface area shall be placed on a precast concrete base. Installation, maintenance and removal of the base shall be the responsibility of the distributor.

f. *Location and Placement.*

1. No newsrack shall be placed or permitted except in conformity with the provisions of this section and upon permit application to the office of the Zoning Official. Any newsrack which rests in whole or in part upon or on any portion of a public street or sidewalk or projects onto, into or over any part of a public street or sidewalk shall be located in accordance with the provisions of the following:

(a) No newsrack shall be used or maintained which projects onto, into or over any part of the roadway of any public street or which rests wholly or in part upon or over any portion of the roadway of any public street.

(b) No newsrack shall be permitted to rest upon, in or over any public street or sidewalk when such installation, use or maintenance:

(1) Endangers the safety of persons or property.

(2) Unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic.

(3) Unreasonably interferes with access to or exit from any legally parked vehicle.

(4) Unreasonably interferes with the ingress or egress from any residence or place of business.

(5) Unreasonably interferes with the use of traffic signs or signals, hydrants or mailboxes permitted at or near said location.

(6) Unreasonably interferes with or impedes the operation of any bus stop.

(c) A newsrack or newsracks shall be placed or otherwise secured so as to prevent their being blown down or around the public street or sidewalk but shall not be chained or otherwise secured to any traffic or street signs, signals, hydrants, trees or mailboxes.

(d) No newsracks shall be placed, installed, used or maintained:

(1) Within three (3) feet of any marked crosswalk or handicap curb ramp.

(2) Within fifteen (15) feet of any fire hydrant, fire call box, police box or other emergency facility.

(3) Within eighteen (18) inches of a curb.

(4) At any location whereby the clear space for the passageway of pedestrians is reduced to less than six (6) feet.

(5) Within ten (10) feet of any standby or sprinkler connection or related safety or fire equipment.

(6) Within five (5) feet of any building, showroom or display window, unless written permission from the owner is secured and same is submitted with the application.

(7) At any location whereby the clear space for the passageway for pedestrians is reduced by the newsrack to less than six (6) feet.

(8) Within three (3) feet of or on any public area improved with lawn, flowers, shrubs, trees or landscaping.

(9) Within three hundred (300) feet of any other newsrack containing the same issue or edition of the same publication.

- (10) In front of a single-family or two-family residence.
- (11) In any district other than the C1, C2 and C3 zones.
- (12) To cause a sight line obstruction at any intersection or driveway.
- (13) No newsracks shall be permitted in any location zoned as residential.

(14) No more than two (2) newsracks may be placed adjacent to each other at any location that complies with this subsection. After a newsrack, or pair of newsracks, is permitted for a specific location, no additional newsracks shall be placed less than one (1) city block from the permitted newsrack.

g. *Abandonment/Removal of Newsracks.*

1. In the event that a newsrack remains empty for a period of ten (10) continuous days or does not contain the publication specified in the application therefor within ninety-six (96) hours after the release of the current issue, the Zoning Official may deem the newsrack abandoned and may, after having given thirty (30) days' written notice to the applicant to remedy the problem specified in said written notice, remove the newsrack from the public right-of-way and/or impound said newsrack.

2. In the event that a newsrack does not conform to any of the provisions of this subsection, the Zoning Official may deem the newsrack a nonconforming newsrack and may, after giving thirty (30) days' written notice to the applicant to remedy the problem specified in said written notice, remove the newsrack and all supporting structures from the public right-of-way or impound said newsrack. Newsracks that do not contain proper owner/operator identification permanently attached thereto may be removed by the Town at any time without notice.

3. *Storage after Removal.* For any newsrack that is removed or impounded in accordance with this section and then stored by the Town, the Township shall charge a storage fee of twenty-five (\$25.00) dollars per day.

h. *Violations and Penalties.* In addition to all enforcement procedures provided herein, any violation of the provisions of this subsection shall be subject to prosecution as a violation and, upon conviction, shall subject the violator to a penalty of not less than one hundred (\$100.00) dollars nor more than five hundred (\$500.00) dollars, to confinement of not more than ninety (90) days in jail, or both. Each day that a violation of this section continues after due notice from the office of the Zoning Official to the violator shall be deemed a separate and distinct violation for each separate newsrack.

i. *Suspension or Revocation of Permit.* In addition to the penalties provided herein, it shall be within the power and discretion of the Zoning Official to suspend or revoke a permit for continued or repeated violations or infractions of any provision of this subsection, or of any rule, direction or regulation of the Zoning Official. Suspension or revocation of a permit shall be mandatory for the third violation of this subsection.

j. *Permits Not to Be Assigned.* The permits issued pursuant to this subsection shall not be assigned or transferred.

(Ord. No. 2006-(O)-19 §§ 1–10)

38-7 OFF-STREET PARKING AND LOADING.

38-7.1 Off-Street Parking and Loading Spaces Required.

In all districts, in connection with every industrial, business, institutional, recreational or residential or any other use, there shall be provided, at the time any building or structure is erected or is enlarged or increased in capacity, off-street parking and loading spaces for automobiles and other vehicles in accordance with the requirements set forth in the Land Subdivision and Site Plan Review Ordinance of the Town of Kearny. Such facilities shall be completed prior to the issuance of a certificate of occupancy. In cases where site plan approval is not required, the standards herein shall prevail. (Ord. No. 10-14-87 § 138-7.100)

38-7.2 Joint Facilities.

Off-street parking and loading facilities for separate uses may be provided jointly if the total number of spaces so provided is not less than the sum of the separate requirements for each use and provided that all regulations governing the location of accessory spaces in relation to the use served are adhered to. Further, no accessory space or portion thereof shall serve as a required space for more than one (1) use unless otherwise approved as provided in the Land Subdivision and Site Plan Review Ordinance. (Ord. No. 10-14-87 § 138-7.200)

38-7.3 Maintenance of Off-Street Parking and Loading Areas.

Every parcel of land hereafter used as a public or private off-street parking or loading area shall be maintained in good condition, free of hazards and deterioration. All pavement, areas, sidewalks, curbs, drainage facilities, lighting, bumpers, guardrails, markings, signs, landscaping and other improvements shall be maintained in workable, safe and good condition. (Ord. No. 10-14-87 § 138-7.300)

38-7.4 Off-Site Parking Facilities.

All permitted and required accessory off-street parking spaces open or enclosed, shall be located on the same zone lot as the use to which such spaces are accessory, except that such spaces may be provided elsewhere within a radius of no greater distance than four hundred (400) feet from the lot, and further provided that the required spaces are provided off the site in accordance with the provisions set forth herein or in the Land Subdivision and Site Plan Ordinance. Such spaces shall be in the same ownership as the use to which they are accessory and shall be subject to deed restrictions filed in the office of the County Clerk in Hudson County, binding the owner and his heirs and/or assigns to maintain the required number of spaces available throughout the life of such use, and such spaces shall conform to all regulations of the district in which they are located. (Ord. No. 10-14-87 § 138-7.400)

38-7.5 Off-Street Parking for One and Two-Family Dwellings.

a. Except as provided for in the following paragraph b. below, every one (1) family and two (2) family dwelling, and any dwelling converted from a one (1) family to a two (2) family dwelling, shall be required to provide a minimum of one (1) off-street parking space for each dwelling unit.

b. *Off-Street Parking for All Residential Uses.* Off-street parking requirements shall be in accordance with the Residential Site Improvement Standards, New Jersey Administrative Code, Title 5, Chapter 21 et seq.

c. Any existing one (1) or two (2) family dwelling, except townhouses, shall be permitted to park operable automobiles in the side or rear yard area, without an enclosed structure, provided there is no adverse effect to the property or abutting properties and subject to subsection 38-7.7.

(Ord. No. 10-14-87 § 138-7.500; Ord. No. 2004-(O)-12; Ord. No. 2005-(O)-09 § 4; Ord. No. 2005-(O)-42 § 4)

38-7.6 Private Garages in Residential Zones.

A private garage permitted as an accessory use in a residential district shall be subject to the following special provisions:

a. A private garage for not more than two (2) motor vehicles shall not be over fourteen (14) feet in height measured to the peak of a sloped roof and not over ten (10) feet in height measured to the highest point of a flat roof and shall not be erected within less than twenty-five (25) feet of the front of the street line. On a corner lot, no part of a garage shall be nearer the side street line than the side yard dimensions permitted for the said corner lot. If a private garage accessory to a residential building is made part of the principal building, the requirements of this subsection shall not apply.

The maximum height of a garage shall be one (1) story in height. Maximum dimensions for a one-car garage is ten (10) feet by twenty (20) feet and maximum dimension for a two-car garage is twenty (20) feet by twenty (20) feet.

b. Space for not more than one (1) noncommercial motor vehicle may be leased in a private garage in the R-1 District, and space for not more than two (2) non-commercial motor vehicles may be leased in a private garage for not more than three (3) motor vehicles in an R-2 and R-3 District.

c. Upon mutual agreement between property owners, party-wall garages may be built across a common lot line. Otherwise, a private garage for not more than three (3) motor vehicles shall be everywhere distant at least three (3) feet from any side or rear lot line, except that if it extends to within less than seventy (70) feet of the front street line, it shall be at least ten (10) feet distant from a side lot line which adjoins a lot in any residential district. In the case of a corner lot, it shall be at least eight (8) feet distant from the rear lot line.

d. A group of garages in the form of a motor court permitted as an accessory use to a garden-type apartment dwelling for four (4) or more but not over twelve (12) family units shall not be located nearer the front street line than the principal building nor within less than four (4) feet of any side or rear lot line.

e. Garage spaces where provided shall be used only by the owners, tenants, or guests, except as noted in paragraph b. and in the following alternative ways:

1. Within the building.

2. Beneath any part of the side or rear yards or courts except within ten (10) feet of any lot line, provided no portion of the roof of such garage, except parapets, extends higher than the level of the first floor beams of the principal building and such roof is so designed as to be used for an open terrace or part of the yard.

3. In a separate building, above the ground on the same lot, provided no part of such building is less than four (4) feet distant from any side or rear lot line.

4. No permit shall be issued for the erection or construction of a depressed garage, attached to a residence, as an accessory use, in a residential zone if any portion of the garage (excepting the foundation) is less than one (1) foot above the street level of the lot upon which the garage is to be erected or constructed; provided, however, that the aforementioned prohibition shall be inapplicable where the entrance to a garage attached to a residence faces away from the public street upon which the dwelling faces, if the elevation of the land behind the garage entrance and further away from the public street is lower than the elevation of the land at the entrance to the aforementioned garage.

f. Within any residential district, no garage built into a basement or terrace shall project in any part of a front yard by more than four (4) feet.

g. Notwithstanding anything in this chapter to the contrary, a private garage in a residential district, lawfully in existence on December 29, 1952, may be rebuilt or repaired and may also be extended by the addition of not more than three (3) feet to its length, which extension may be in the front or in the rear, provided such extension is only to the first floor of the building.

h. Private garages which are accessory uses customarily incidental to the principal permitted uses and are located on the same lot, may include a private garage for not more than three (3) motor vehicles. Except as provided herein, such accessory uses shall not include any use customarily carried on as a gainful business or industry nor the erection or maintenance of any advertising sign except as herein specified, provided, however, that the parking of a commercial vehicle under a rated capacity of one (1) ton shall not constitute a prohibited use under this section.

i. Private garages accessory to garden apartment dwellings and multiple-family residences may be grouped in motor courts enclosed on all sides except for necessary driveway entrances, but shall provide storage for not more than two (2) motor vehicles for each family dwelling unit on the premises. Garages or off-street parking spaces shall be provided as accessory uses to garden and multiple-family residences in accordance with the provisions of the Subdivision and Site Plan Ordinance.

(Ord. No. 10-14-87 § 138-7.600; Ord. No. 1999-O-2 §§ 30, 40)

38-7.7 Off-Street Parking for Certain Dwellings.

Off-street parking spaces with a paved or graveled surface and roadway connecting with the street may be substituted for all or part of the private garage space required for dwellings under subsection 38-7.5 or 38-7.6e, provided such parking space is in the side or rear yard and is not less than three (3) feet distant from any side or rear lot line with the intervening space appropriately buffered by landscaping. Access to such side or rear yard parking.* The maximum driveway width and curb width of a driveway located between the building line and street line in the R-1M Zone shall be ten (10) feet. Such parking space shall be used only by tenants of the principal building or buildings and temporarily by guests of such tenants. Where such parking is provided in the rear yard, no more than thirty-three (33%) percent of the rear yard shall consist of impervious surfaces including such parking areas, except that a maximum of sixty (60%) percent impervious coverage in the rear yard shall be permitted with lots having a width of twenty-five (25) feet or less. In no case shall the improved lot coverage for the entire lot exceed the maximum permitted in Schedule I.**

Additional parking may be permitted on the paved driveway leading to such parking spaces, or to a garage. Such additional parking is intended to alleviate on-street parking congestion with the least impact on aesthetic and environmental concerns. This additional parking alone does not fulfill the off-street parking requirements mandated in other sections of this chapter. (Ord. No. 10-14-87 § 138-7.700; Ord. No. 1999-O-2 § 31; Ord. No. 2000-0-17; Ord. No. 2004-(O)-12)

38-7.8 Paving of Front Yard Areas.

Reserved. (Ord. No. 1999-O-2 § 32)

38-7.9 Driveway Construction.

This subsection shall be known as the Town of Kearny "Driveway Construction" Ordinance.

a. *Purpose.* The purpose of this subsection is to promote the public health, safety, and general welfare of the community, to further the safe and orderly layout of driveways that enter onto Town streets or roads.

b. *Definitions.* See subsection 38-2.2, Definitions.

c. *Permit Required.* No person or entity shall establish, construct, modify, or rework a driveway from a private property line to a public roadway without first filing a zoning permit application form and receiving a zoning permit from the Kearny Construction Code Enforcement Department.

d. *Application Requirements and Procedures.*

1. *Application Form.* Applications for zoning permits shall be made on a form approved by the Construction Code Official and are available at the Kearny Construction Code Enforcement Office.

2. Application Procedures. A completed zoning application form shall be filed with the Construction Code Enforcement Department along with the required application fee and attachments, including the following:

(a) A scale drawing of the property parcel, to include all buildings or structures existing and any proposed buildings or structures the applicant intends to add to the parcel. The drawing shall include the proposed or existing driveway location. Distances from the existing property lines to the centerline of the driveway shall be dimensioned to establish the driveway location. The width of the driveway at the edge of the roadway will be dimensioned, and the proposed driveway slope shall be provided.

(b) A copy of a Hudson/Essex County Soils Conservation District approval, if applicable.

3. Application Review. The Construction Code Official shall review the completed application and shall approve or deny stating reasons for any denial.

4. Permit Period. The zoning permit shall be effective for twelve (12) months from the date of issuance. If the driveway is not completed within the permit period, the permit is deemed expired and a new application must be submitted for approval.

5. Driveway Inspection. The applicant shall notify the Construction Code Enforcement Office within five (5) working days from the completion of construction or improvement of the driveway. The Building Inspector shall conduct an inspection of the driveway to ensure full compliance with all provisions of this section and terms of the permit.

6. Building Permits. The Building Inspector shall determine whether the driveway must be completed prior to commencing construction of any buildings or structures on the parcel and may condition any building permit on completion of the driveway for the following reasons:

(a) Construction activities are reasonably likely to cause the tracking of soil, gravel vegetation or other material onto the public street or roadway.

(b) Construction of the driveway is necessary to allow for the safe and efficient access of construction vehicles entering or leaving the construction site.

7. Application Fee. The fee for each zoning permit shall be twenty-five (\$25.00) dollars plus a fifty (\$50.00) dollar inspection fee. There shall be no inspection fee required for the resurfacing or patching of a lawfully existing driveway with the same or similar material as currently exists, providing that there is no expansion of the driveway area and that the existing curb cut remains unchanged.

8. Town Authority Preserved. The Town of Kearny, notwithstanding the issuance of any permit under this subsection or construction of any driveway, reserves the right to make any changes, additions, repairs or relocation of any part of a driveway within the dedicated right of way at any time, including but not limited to, in connection with the relocation, construction, widening and maintaining the street or road or right of way, without

compensating the owner of such private driveway of the damages to or destruction of such private driveway.

e. *Driveway Location, Design and Construction Requirements.*

1. General Requirements. The location, design and construction of driveways shall be in accordance with the following:

(a) General Design. Driveways shall not provide direct ingress or egress to or from any street intersection, and shall not encroach upon or occupy areas of the street right-of-way required for effective traffic control. A driveway shall be located a minimum of forty (40) feet from the intersecting centerlines of streets or roadways, or a maximum distance from the intersecting centerlines to the driveway that can be achieved to provide access to an existing lot. A driveway shall be so located and constructed that vehicles approaching or using it shall have adequate sight distance along the street or road. Driveway approaches shall be at least ten (10) feet apart and shall be placed wherever possible as not to interfere with utilities in place.

(b) Number. Not more than one (1) driveway shall be permitted to serve an individual residential property. Preexisting commercial or light industrial uses situated within any residential zone shall be limited to not more than one (1) driveway. No two (2) adjoining parcels shall be served by two (2) or more driveways on adjoining properties, which share a single access point onto a Town street or road.

(c) Drainage. The surface of the driveway connecting with the street or road shall be sloped to preclude an extraordinary or inordinate amount of surface water drainage from flowing onto the street or roadbed. No driveway apron shall extend out into the street or road further than the edge of the street or road or face of the curb. All driveway entrances and approaches shall be so constructed that they shall not interfere with the drainage of the street or road or any existing structure in the right-of-way.

(d) Relocation of Utilities. Any costs of relocating utility structure or facilities shall be the responsibility of the property owner.

(e) Removal of Trees Prohibited. No existing trees within the right-of-way shall be altered, removed or otherwise damaged to accommodate the location of any driveway.

(f) Variances. The Zoning Board of Adjustment may vary any of the above requirements where the peculiar nature of the property or the design of the street or road may make the rigid adherence to the above requirements impossible or impracticable.

2. Special Requirements for Residential Driveways.

(a) Width of driveway. A residential driveway shall be no greater than:

- | | |
|-------------------------------|--------------|
| (1) For a one-family dwelling | 10 feet wide |
| (2) For a two-dwelling | 14 feet wide |

At the edge of pavement of the street/road or curblines.

(b) Angular placement prohibited. The centerline of the driveway between the property line and the curb must be at a right angle to the edge of the pavement of the street or roadway or curblines of the lot it serves. The centerline of the driveway may not be parallel to the property line of the lot it serves. The Construction Code Official may grant special permission for a driveway to be at an angle other than a right angle to the street, only if the owner demonstrates a legitimate need and there exists no reasonable alternative to safe ingress and egress to or from the property or to preserve existing mature tree growth on the lot or within the row. Preexisting, nonconforming driveways, lawfully existing at the time of adoption of paragraph e,2(b) Angular placement, of this subsection* may be continued upon the lot of the building or structure served by said driveway unless the nonconformity is abandoned for a period of one (1) year or more.

3. Prohibited Driveways.

(a) No driveway shall be located within the sight triangle. At roadway intersections a driveway shall not provide direct ingress or egress to or from the roadway intersection area and shall not occupy areas of the roadway deemed necessary by the Town for effective traffic control.

(b) Joint or common driveways serving two (2) separate adjoining parcels or properties by way of a single access point in a street or road shall be prohibited.

4. Construction/Reconstruction of Curbs. When construction of a driveway requires the removal of a curb the same shall be replaced and restored with equivalent acceptable material per Town standards. (See Chapter XXIII, Sections 23-17 and 23-18 of these Revised General Ordinances). Curb returns shall be provided or restored in a neat and acceptable manner.

5. Maintenance Responsibility. The property owner is responsible for maintaining the driveway approach in such a manner necessary to permit free and unobstructed flow of water. The Town of Kearny does not assume any responsibility for repair or replacement of concrete or decorative pavement, decorative endwalls/headwalls, the removal or clearance of snow and/or ice, upon any portion of a driveway within the Town of Kearny right-of-way.

f. *Enforcement.* The Construction Code Enforcement Department may post a stop-work order if a driveway or other permitted construction or any part thereof is being installed contrary to the terms of this subsection or without a permit.

g. *Penalties.* Any person who constructs or modifies any driveway without a permit as required by this subsection shall be subject to a fine of two hundred fifty (\$250.00) dollars, plus all applicable assessments, surcharges and court costs. Any person who shall construct or modify a driveway in violation of any other provision of this subsection, shall, unless the violation is corrected within thirty (30) days of the date of the written notice from the Construction Code Enforcement Department, be subject to the penalties as provided for in Chapter I, Section 1-5,

plus all applicable assessments, surcharges and court costs. Each day that any violation continues shall constitute a separate offense. An unlawful driveway constitutes a public nuisance and may be subject to abatement by any applicable procedure.

(Ord. No. 2004-(O)-70 § 2)

38-8 NONCONFORMING USES AND STRUCTURES AND UNDERSIZED STRUCTURES.

38-8.1 Continuation of Use.

A use, building or structure which is lawfully in existence at the effective date of the chapter and shall be made nonconforming at the passage of this chapter or any applicable amendment thereto may be continued, except as otherwise provided herein. (Ord. No. 10-14-87 § 138-8.100)

38-8.2 Regulation of Nonconforming Uses.

No existing use, building or premises devoted to a nonconforming use shall be enlarged, extended, reconstructed, substituted or structurally altered, except when changed to a conforming use or when required to do so by law and as follows:

a. Any nonconforming structure or use damaged to less than eighty (80%) percent of its previous existing area may be restored, reconstructed or used as before, provided the area of such use, building or structure shall not exceed the area which existed prior to such damage nor increase the intensity of use. The Board of Adjustment shall determine the time period in which complete restoration shall take place.

b. *Repairs.* Normal maintenance and repair of a structure containing a nonconforming use is permitted, provided that it does not extend the area or volume of space occupied by the nonconforming use and does not increase the number of dwelling units or increase the intensity of use.

c. Nothing in this chapter shall prevent the strengthening or restoring to a safe or lawful condition any part of any building or structure declared unsafe or unlawful by the Construction Official or other authorized State or Town official.

(Ord. No. 10-14-87 § 138-8.200)

38-8.3 Termination of Nonconforming Uses.

a. *Abandonment.* The change of a nonconforming use to a more restricted, or conforming use for any period of time shall be considered an abandonment thereof, and such nonconforming use shall not thereafter be revived.

b. *Partial Destruction.* When eighty (80%) percent or more of the existing area of a nonconforming structure is destroyed by fire or other casualty or an act of God, the use of such structure as a nonconforming use shall thereafter be terminated.

c. *Nonconforming Buildings Lawfully Under Construction.* Any nonconforming building or structure lawfully under construction on the effective date of this chapter, pursuant to plans filed with the Construction Official and approved by him and all other municipal boards and agencies as required under law, may be completed and may be used for the nonconforming use for which it was designed, to the same extent as if such building had been completed and been in use at the effective date of this chapter, provided that such building or structure shall be completed within one (1) year after the effective date thereof.

d. *Nonconforming Billboards.* A nonconforming billboard which is damaged by elements to such an extent that its supporting members are broken shall be deemed to have been destroyed and shall not be reconstructed.

(Ord. No. 10-14-87 § 138-8.300; Ord. No. 8-8-82)

38-8.4 Exceptions to Nonconforming Uses and Structures and Undersized Structures.

Notwithstanding any other provision of this Zoning Ordinance and particularly the provisions of Article VIII hereof, any building or structure located in a R-1, R-2 or R-3 zone presently used for residential purposes and lawfully in existence at the effective date of this chapter or one (1) year prior thereto, may be rebuilt in the event of damage, destruction, or intentional demolition without obtaining a variance provided the dimensions of the structure are substantially identical to the dimensions of the damaged, destroyed or demolished structure. (Ord. No. 10-14-87 § 138-8.400)

38-9 ADMINISTRATION AND ENFORCEMENT.

38-9.1 Construction Official/Zoning Officer.

There is created hereby the full-time position of Construction Official/Zoning Officer.

a. *Duties, Power and Authority.* The Construction Official/Zoning Officer shall have the chief administrative responsibility for administering and enforcing the provisions of Chapter XXXV, XXXVI and XXXVIII, other applicable State, County and local construction and zoning laws, ordinances, rules and regulations, and the New Jersey Uniform Construction Code as it applies to the Town. He shall issue zoning permits, construction permits and certificates of occupancy. He shall examine the working plans of proposed buildings and shall conduct field work to ensure compliance with construction and zoning requirements. He shall examine all applications for permits and issue permits for the construction, alteration, enlargement and occupancy of all uses which are in accordance with the aforesaid requirements. He shall also issue permits for those applications which require a variance from the requirements of Chapters XXXV, XXXVI and XXXVIII or which require site plan or subdivision approval, but only upon written order of the Board of Adjustment or the Planning Board, as the case may be. He shall also record and file and safely keep all applications for permits, with accompanying plans and documents, and make reports to the Mayor and Council.

b. *Compensation.* The salary for the position shall be as set forth in the salary ordinance of the Town for Construction Official.

c. *References.* All references now in the General Ordinances to "Construction Official" or to "Zoning Officer" shall be read to mean Construction Official/Zoning Officer. (Ord. No. 10-14-87 § 138-9.100; Ord. No. 2002-O-8 § 1)

38-9.2 Building Permits.

a. *Purpose.* To ensure compliance with the provisions of this chapter, no person shall erect, alter or convert any structure or building or part thereof or alter the use of any land subsequent to the adoption of this chapter, until a building permit has been issued by the Construction Official.

b. *Issuance of Permit.* Any building permit issued under this section shall be valid for a period of one (1) year from the date of issuance. Unless a certificate of occupancy as hereinafter provided is issued for the structure covered by the permit within one (1) year, the permit shall automatically lapse; application may, however, be made for renewal of the permit for a one (1) year period. One (1) copy of the building permit shall be kept conspicuously on the premises affected and protected from the weather whenever construction work is being performed thereon. No owner, contractor, workman or other person shall perform any building operations of any kind unless a building permit covering such operation has been displayed as required by this chapter, nor shall anyone perform building operations of any kind after notification of the revocation of the building permit.

c. *Denial of Permit.* When the Construction Official is not satisfied that the applicant's proposed development will meet the requirements of this chapter, he shall refuse to issue a building permit and the applicant may appeal to the Zoning Board of Adjustment as prescribed by law.

d. *Revocation of Permit.* If it shall appear, at any time, to the Construction Official that the application or accompanying plan is in any respect false or misleading, or that work is being done on the premises differing from that called for in the applications filed with him under existing laws or ordinances, he may forthwith revoke the building permit, whereupon it shall be the duty of the person holding the same to surrender it and all copies thereof to the Construction Official. After the building permit has been revoked, the Construction Official may, in his discretion, before issuing the new building permit, require the applicant to file an indemnity bond in favor of the Town of Kearny with sufficient surety conditioned for compliance with this chapter and all laws and ordinances then in force, and in a sum sufficient to cover the cost of removing the building or structure if it does not comply. (Ord. No. 10-14-87 § 138-9.200)

38-9.3 Certificate of Occupancy.

a. *For New Uses.*

1. It shall be unlawful to use or permit the use of any building or premises or part thereof, hereafter erected or converted, altered or changed from one use to another use, wholly or partly, until a certificate of occupancy shall have been issued by the Construction Official. Such certificate shall show that such building or premises or part thereof and the proposed use thereof are in conformity with the provisions of this chapter. It shall be the duty of the Construction Official to issue a certificate of occupancy within ten (10) days

after a request for the same shall be filed in his office by any owner, after having determined that the building and the proposed use thereof conform to all the requirements herein set forth.

2. Compliance with Other Ordinances. No certificate of occupancy shall be issued unless the applicant first obtains a zoning permit for that property from the Zoning Official. Further, a certificate of occupancy shall not be issued until the Construction Official determines that all applicable codes and ordinances administered and enforced by any of the following names, department(s) or agencies have been complied with:

- (a) The Board of Health
- (b) The Town Engineer
- (c) The Fire Department
- (d) The Police Department
- (e) The Planning Board
- (f) The Board of Adjustment
- (g) The Recreation Commission
- (h) The Department of Public Works
- (i) The Governing Body
- (j) The County Planning Board
- (k) Any other applicable department, board or agency, by the Municipal, County, State, Federal, or interstate government agency.

b. *Existing Residential Uses—Certificate of Continued Occupancy.*

1. Upon the transfer of title to any property located within the boundaries of the Town of Kearny, it shall be unlawful for any owner to occupy or permit the occupancy of that property without first obtaining a certificate of continued occupancy. This section does not apply to property transfers by inheritance. No certificate of continued occupancy shall be issued unless the applicant first obtains a zoning permit for the specific property.

When any R-3 and R-5 (use groups) (pertains to one- and two-family dwellings) property is sold, a smoke and carbon monoxide detector compliance certificate, as required by the laws of the State of New Jersey, must be obtained from the Construction Official/Zoning Officer, prior to the issuance of a certificate of [continued] occupancy. The fee for the compliance certificate shall be included in the fees below. No certificate of [continued] occupancy shall be issued unless the applicant first obtains a zoning permit for that property.

A certificate of continued occupancy shall be applied for through the Construction Code Enforcement Department for the Town of Kearny. The certificate of continued occupancy shall indicate that as a result of a general inspection of the visible parts of the structure, no violations have been determined to have occurred and no unsafe conditions have been found, and that the existing use of the structure heretofore lawfully existed. If any

violations are found, no occupancy shall be permitted until all items designated for correction by the Construction Code Enforcement Department are made, corrected, and inspected. No certificate of continued occupancy shall be issued unless the applicant first obtains a zoning permit for that property.

2. Fees. Fees payable through the Construction Code Enforcement Department of the Town of Kearny for a residential certificate of continued occupancy shall be as follows:

One-family dwelling	\$60.00	(Includes smoke detector)
Two-family dwelling	\$80.00	(Includes smoke detector)
Three-family or more	\$40.00/dwelling unit	(No smoke detector necessary)

c. *Change of Use.* No owner, tenant or other person shall use or occupy any building or structure thereafter erected or altered, the use of which shall be changed after the passage of this chapter, without first procuring a zoning permit and certificate of occupancy, provided that certificate of occupancy once granted shall continue in effect as long as there is no change of use, however, a new zoning permit must be issued upon every change of commercial tenancy or commercial occupancy.

d. *Certificate of Occupancy Records.* A record of all certificates shall be kept on file in the office of the Construction Official and copies shall be furnished upon request to any person having a proprietary interest or tenancy in the building affected.

(Ord. No. 10-14-87 § 138-9.300; Ord. No. 4-12-94; Ord. No. 2003-(O)-10 §§ 1, 2; Ord. No. 2003-(O)-11; Ord. No. 2003-(O)-32 §§ 1, 2; Ord. No. 2005-(O)-42 §§ 2, 3)

38-9.4 Completion of Buildings for Which Plans Have Been Filed.

Nothing herein contained shall require any change in the plans, construction or designated use of a building or which a building permit has been heretofore issued or for which plans are on file with the Construction Official at the time of passage of this chapter and for the erection of which a permit is issued within one (1) month from the passage of this chapter and the construction of which, in either case, shall have been diligently prosecuted within three (3) months of the date of such permit, and the ground-story framework of which, including the second tier of beams, shall have been completed within six (6) months of the date of such permit; and which entire building shall be completed, according to such plans as have been filed, within one (1) year from the date of the passage of this chapter, except if construction has been delayed as a result of a national emergency. (Ord. No. 10-14-87 § 138-9.400)

38-9.5 Violations and Penalties.

a. *Complaints of Violations.* Any person may file a complaint if there is any reason to believe a violation of this chapter exists regarding a violation of the building code, certificate of occupancy requirements, zoning permit requirements or conditions of site plan, subdivision or variance approvals. All such complaints must be in writing and shall be filed with the Construction Official, who shall properly record such complaint and immediately investigate.

b. *Procedures for Abatement of Violations.* A violation of any of these terms of this chapter shall be abated within five (5) days, or within as reasonable a time as may be determined, after written notice has been served, either by mail or personal service.

c. *Penalties.* Any person, firm or corporation violating any provision of this chapter, shall upon conviction be subject to a fine of not less than one hundred (\$100.00) dollars nor more than one thousand (\$1,000.00) dollars for each offense or imprisonment not exceeding ninety (90) days or both, in the discretion of the Court imposing sentence pursuant to N.J.S.A. 40:49-5. Each day that a violation occurs or is committed shall constitute a separate offense. The imposition of the penalties herein prescribed shall not preclude the Town of Kearny from instituting an appropriate action or proceeding to prevent an unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, or to restrain, correct or abate a violation, or to prevent the occupancy of a building or structure or premises, or to prevent an illegal act, conduct, business or use in or about any premises.

(Ord. No. 10-14-87 § 138-9.500; Ord. No. 4-12-94; Ord. No. 9-26-95; Ord. No. 2003-(O)-40)

38-9.6 Zoning Permits.

a. *Required Permit.* Before the commencement of a use or the erection, construction, reconstruction, alteration, conversion, or installation of any structure or building the property owner shall obtain a zoning permit. Failure of a property owner to comply with this paragraph is a violation of law and subjects the owner to penalty under Kearny Code, N.J., § 38-9.5.

b. *Duties of the Zoning Official.* The Zoning Official shall grant or deny the issuance of a zoning permit in writing within ten (10) days of a request. A zoning permit shall be issued only if the Zoning Official determines that the use, structure, or building complies with the provisions of the municipal zoning ordinance or variance.

c. *Compliance with Other Ordinances.* The Zoning Official shall not issue a zoning permit until determining that the use, structure, or building complies with all applicable codes and ordinances administered and enforced by any of the following departments or agencies:

1. The Board of Health
2. The Town Engineer
3. The Fire Department
4. The Police Department
5. The Planning Board
6. The Board of Adjustment
7. The Recreation Commission
8. The Department of Public Works
9. The Governing Body
10. The County Planning Board

11. Any other applicable department, board or agency, by the Municipal, County, State, Federal or interstate government agency.

d. *Fees.* Every applicant for a zoning permit shall pay a twenty-five (\$25.00) dollar application fee to the Construction Code Enforcement Department for each permit.

e. *Zoning Permit Records.* The Zoning Official shall keep records of all permits issued in his or her office. Copies shall be provided upon request to any person having a proprietary interest or tenancy in the buildings or lands affected.

(Ord. No. 2003-(O)-11 § 2; Ord. No. 2003-(O)-31 § 2)

38-10 INTERPRETATION AND VALIDITY.

38-10.1 Governing Body May Amend.

All amendments to this chapter and to the zoning map, * which forms a part hereof, shall be in accordance with the provisions of N.J.S.A. 40:55D-62 et seq. and any amendments or revisions thereto. (Ord. No. 10-14-87 § 138-10.110)

38-10.2 Interpretation.

a. In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements adopted for the promotion of the public health, morals and general welfare; for lessening the congestion in the streets; for securing safety from fire, panic and other dangers; for the provision of adequate light and air; for preventing overcrowding of land or buildings; for the avoidance of undue concentration of population; and for facilitating adequate provision of transportation, water, sewerage, schools, parks and other public improvements.

b. It is not intended by this chapter to repeal, abrogate, annul or in any way to impair or interfere with any existing provision of law or ordinance or with any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to law relating to the use of buildings or premises; nor is it intended by this chapter to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this chapter imposes greater restrictions upon the use of buildings or premises or upon the height of buildings, or requires larger yards, courts or other open spaces than are imposed or required by such existing provision of law or ordinance or by such rules, regulations or permits or by such easement, covenants or agreements, the provisions of this chapter shall control.

c. Nothing contained in this chapter shall apply to any public building in the Town of Kearny.

(Ord. No. 10-14-87 § 138-10.200)

38-10.3 Amendments.

a. The Town Council may from time to time either on its own motion or on petition, after public notice and hearing, amend, supplement or change the regulations and districts herein established. Every such proposed amendment, supplement or change shall be referred by the Town Council to the Planning Board for report before the above public hearing.

b. Such amending ordinance shall be adopted after the Planning Board has adopted the land use plan element of a master plan and all of the provisions of such zoning ordinance or any amendment or revision thereto shall either be substantially consistent with the land use plan element of the master plan or designed to effectuate such plan element; provided that the Governing Body may adopt a zoning ordinance or amendment or revision thereto which in whole or part is inconsistent with or not designed to effectuate the land use plan element, but only by affirmative vote of the majority of the full authorized membership of the Governing Body with the reasons of the Governing Body for so acting recorded in its minutes when adopting such a zoning ordinance; and provided further that, notwithstanding anything aforesaid, the Governing Body may adopt an interim zoning ordinance pursuant to law.

c. A protest against any proposed zoning amendment or revision of a zoning ordinance may be filed with the municipal clerk, signed by the owners of twenty (20%) percent or more either of the area of the lots or land included in such proposed change, or of the lot or land extending two hundred (200) feet in all directions therefrom inclusive of street space, whether within or without the municipality. Such amendment or revision shall not become effective following the filing of such protest except by the favorable vote of two-thirds (2/3) of all the members of the Governing Body of Kearny.

(Ord. No. 10-14-87 § 138-10.300)

38-10.4 Validity.

If any section, subsection, sentence, clause or phrase of this chapter or the location of any district boundary shown on the Zoning Map that forms a part hereof is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this chapter or Zoning Map. The Governing Body of the Town of Kearny hereby declares that it would have passed this ordinance and each section or part thereof irrespective of the fact that any one (1) or more sections or parts thereof be declared invalid.

(Ord. No. 10-14-87 § 138-10.400)

38-10.5 Fees.

a. *Payment of Fees.* All fees required hereunder shall be paid in cash, certified check or money order payable to the Town of Kearny.

b. *Construction Official Fees.* Construction Official fees shall be paid at the office of the Construction Official upon filing of an application for a building permit or Certificate of Occupancy. The fee will be based on the Uniform Construction Code fees established by the regulations of the New Jersey Uniform Construction Code.

c. *Additional Fee.* An additional fee of twenty-five (\$25.00) dollars as required in response to inquiries relative to the issuance of a Certificate of Occupancy, use of premises, use of structures, flood zone location or any inquiry requiring a search and written response.

d. *Escrow Fees.* Unless waived by the authority, an applicant for development shall deposit professional review fees in an escrow account with the Township of Kearny for review of an application for development and the preparation of documents related thereto. Such fees are in addition to the application filing fees in subsection 36-3.2a. There shall be no initial escrow deposit required. However, if in the course of an application, the approving authority determines that an escrow account or deposit is needed and contains insufficient funds to perform required application reviews, the Chief Financial Officer of the Town of Kearny shall provide the applicant with a notice of insufficient escrow or deposit balance. Upon such notice, the applicant shall within a reasonable time period post a deposit to the account in an amount to be agreed upon by the approving authority and the applicant.

The charging to and processing of escrow fees and any disputes related thereto shall be handled in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-53.2. (Ord. No. 10-14-87 § 138-10.600; Ord. No. 12-12-90; Ord. No. 1996-29 § 1)